

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

3 JAMIE LEIGH JONES,
4 PLAINTIFF,

5 v.

6 HALLIBURTON COMPANY D/B/A
7 KBR KELLOGG BROWN & ROOT
8 (KBR); KELLOGG BROWN & ROOT
9 SERVICES, INC.;
10 DEFENDANTS.

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. H-07-CV-2719
. HOUSTON, TEXAS
. JULY 5, 2011
. 8:34 A.M.

12 TRANSCRIPT OF JURY TRIAL
13 BEFORE THE HONORABLE KEITH P. ELLISON
14 UNITED STATES DISTRICT JUDGE

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1 P R O C E E D I N G S

2 *(Jury not present)*

3 THE COURT: Okay. The jury is all here, but we need
4 to see if we can be brief.

08:34 5 Good morning and welcome back.

6 What's up?

7 MR. MCKINNEY: Just wanted to clear with the Court
8 that Dr. Scarano has been briefed by the Court on the
9 412 rulings and whatnot and the rulings regarding the grand
08:34 10 jury?

11 THE COURT: He has. He sure has.

12 MR. MCKINNEY: Okay. I don't want to inadvertently
13 elicit any responses.

14 THE COURT: No. He's been -- we communicated with him
08:34 15 about evidentiary rulings that have and have not been made, and
16 he's sensitive to his obligations both pursuant to the Rules of
17 Evidence and as a sworn witness.

18 MR. ESTEFAN: Thank you, Judge. And on a related
19 matter, I know the Court's ruling is that he can be referred to
08:35 20 as an independent expert. I just would urge the Court to not
21 allow questioning about, you know, you're not being paid for --
22 you weren't hired by the defense, you weren't hired by the
23 plaintiff, that kind of leaves it only one other person in the
24 courtroom that may have brought him in here. It's sort of a
08:35 25 backdoor way of getting to court-appointed status. And, so, I

08:35

1 just --

2 MR. McKINNEY: I do plan to point out to the jury that
3 he was not retained by either side.

4 THE COURT: Yeah, I thought that's what gave him
5 credibility and even gravitas, that he was not hired by either
6 party.

7 MR. McKINNEY: No sides had access to him.

8 MR. HEDGES: We won't say, "Did we pay you anything?"
9 We won't say that.

10 THE COURT: That's fine. That's fine.

11 MR. ESTEFAN: Depending on how it's highlighted, I
12 think the inference from the jury could be that obviously he is
13 Court appointed. So, I just --

14 THE COURT: Okay. That's fine. Okay. Anything
15 further?

16 *(Jury present)*

17 THE COURT: Thank you. Please be seated.

18 Ladies and gentlemen, hope the weekend was a good
19 one. We thank you for your promptness this morning. We're
20 ready to proceed with a new witness.

21 MR. McKINNEY: May it please the Court? Charles Bortz
22 calls Dr. Victor Scarano out of order.

23 *(Witness being summoned to the stand)*

24 THE COURT: Dr. Scarano. Yes, sir. This will be your
25 seat up here. It's not a terribly comfortable seat, but do the

08:37 1 best you can and try to speak directly into the microphone.

2 Dr. Scarano, before you're seated, Ms. Loewe will administer
3 the oath.

4 THE CASE MANAGER: Do you solemnly swear the testimony
08:37 5 you're about to give in the matter now before the Court will be
6 the truth, the whole truth, and nothing but the truth?

7 THE WITNESS: I do.

8 THE COURT: Okay. Thank you. Please be seated.

9 You may inquire.

08:37 10 MR. McKINNEY: Thank you, your Honor. Let the witness
11 get situated, please.

12 **VICTOR SCARANO, DULY SWORN, TESTIFIED:**

13 **DIRECT EXAMINATION**

14 BY MR. McKINNEY:

08:38 15 Q. Would you state your name, please, for the jury.

16 A. Yes. My name is Victor Scarano, S-C-A-R-A-N-O.

17 Q. And what do you do for a living?

18 A. I am a forensic psychiatrist.

19 Q. So, that would make you Dr. Scarano?

08:38 20 A. Yes. You have to be a medical doctor to be a psychiatrist.

21 Q. We're going to talk about what a forensic psychiatrist does
22 in just a moment, but first I want to acquaint the jury with
23 your role in this matter. You are here today as an independent
24 expert. Is that correct?

08:38 25 A. That's correct.

08:38 1 Q. Not hired by either side of this -- any side to this
2 lawsuit?

3 A. That's correct.

4 Q. And you have not had contact with any of the attorneys in
08:38 5 this case. Is that correct?

6 A. I have not spoken to any attorney since I've been in this
7 case.

8 Q. You have been furnished substantial materials for your
9 review in this lawsuit, have you not?

08:39 10 A. I have.

11 Q. All of that has been done through a disinterested third
12 person?

13 A. My understanding is that the information that I got came
14 through the Court.

08:39 15 Q. All right. Now, tell us a little bit about your
16 educational background, starting with medical school and
17 acquaint the jury -- first of all, let me back up.

18 How old a man, are you?

19 A. I am 75.

08:39 20 Q. You have a lengthy résumé. I'm not going to go through it
21 line by line. If you would simply acquaint the jury with your
22 education beginning with medical school, and inform the jury of
23 the various different Board certifications you have held over
24 the years as a medical doctor.

08:40 25 A. Okay. I went to medical school at Jefferson Medical

08:40 1 College in Philadelphia, Pennsylvania. I did an internship
2 following medical school. I served two years in the Air Force.
3 I did a surgical residency at the University of Alabama in
4 Birmingham. I then did a cardiovascular surgical residency at
08:40 5 the University of Tennessee in Memphis. And then I did a
6 residency in pediatric general thoracic and cardiac surgery in
7 Toronto, Canada at the Hospital for Sick Children.

8 In '87 to '89, I went to law school and got a
9 degree as a -- a juris doctor degree. And then in 1994 I came
08:41 10 to Houston at Baylor College of Medicine, completed a
11 psychiatric residency, spent one year in forensic psychiatry at
12 the University of Texas Medical Branch in Galveston and then
13 returned to Baylor as chief of forensic psychiatry until 2006,
14 when I left and opened up my own practice of forensic
08:41 15 psychiatry as Texas Law & Psychiatry.

16 Q. Tell us, please, the difference between an ordinary or
17 treating psychiatrist and a forensic psychiatrist. What sets
18 you apart from some of the doctors we've heard from and may yet
19 hear from in this trial?

08:42 20 A. The difference between a practicing treating psychiatrist
21 and a forensic psychiatrist is a critical difference. A
22 treating psychiatrist, like any treating physician, has
23 patients come to them because there's something in their life
24 that is causing problems or distress, whether it's orthopedics,
08:42 25 dermatology, obstetrics, or psychiatry. The assumption is when

08:42 1 the patient comes to the doctor that they are going to tell
2 them the symptoms that they have so that they can have
3 treatment that would relieve their suffering. The treating
4 doctor assumes that the patient is telling them the truth.

08:43 5 In forensic psychiatry, my practice and all
6 forensic psychiatrists are involved in legal matters with
7 individuals that may or may not have a psychiatric illness.
8 The forensic psychiatrist does not form a doctor/patient
9 relationship with the individual. The individual is not a
08:43 10 patient. The individual is a person to be evaluated, the
11 defendant, the plaintiff, so forth. The forensic psychiatrist
12 cannot assume that the individual is going to tell them the
13 truth.

14 So, because the individual in that particular
08:43 15 environment has a vested interest in what the outcome is in
16 that legal matter, therefore, the forensic psychiatrist has to
17 look at other materials to see whether what the individual is
18 saying is corroborated by the other materials that you are --
19 is there somebody, something, some information that
08:44 20 corroborates what it is that the individual is saying is their
21 problem, because of some legal matter.

22 It is especially important in the area of
23 post-traumatic stress disorder because the symptoms are all
24 subjective. If you have a broken bone, you can get an x-ray
08:44 25 and you can see the broken bone. In post-traumatic stress

08:44 1 disorder, it is all subjective. So, you need to look and see
2 is there anything to corroborate the symptoms and the signs
3 that are being complained of.

08:45 4 Q. In conducting your forensic psychiatric evaluation in this
5 case, outline briefly what you looked at, what you did, what
6 your methodology was in arriving at your opinions, if any.

08:46 7 A. Sure. All right. To do a forensic independent psychiatric
8 evaluation, there are several things to be done. One is a
9 face-to-face interview with the individual who is complaining
10 of some problem that has to do with a legal matter. For
11 instance, a person is -- in a criminal case has murdered
12 somebody. So, you want to have a face-to-face interview to see
13 what the circumstances were, what the mindset was at the time
14 that the event occurred.

08:46 15 So, even in a civil case, you want to have a
16 face-to-face interview with the individual, which was done.
17 That interview, besides finding out what their recollection was
18 of the events, you want to also understand their mental status.
19 So, you want to know how is their concentration, how is their
08:47 20 affect, are they depressed, how is their mood, what is their
21 thought processes, are they having hallucinations and so forth.

08:47 22 Then you go through a past psychiatric history,
23 past medical history. And then you go through records. And as
24 you can see here before you, these are the boxes of records
25 that I was given to go through.

08:47 1 And then you try to put together your
2 understanding of whether or not the information that you have
3 collected supports or doesn't support what is being claimed.

08:47 4 Q. You mentioned medical records and interview and some
5 testing that you did; and you have alluded to these four boxes
6 here on the floor, which are your file. In and amongst the
7 materials that you reviewed, would that include depositions of
8 witnesses, the Department of State report, and witness
9 statements and matters of that nature?

08:48 10 A. Yeah, many depositions and all of those materials were in
11 these four boxes of materials that I reviewed.

12 Q. Did you prepare a report?

13 A. I did.

08:48 14 Q. Tell the jury how many pages -- how many pages long your
15 report is, exclusive of appendices.

16 A. Okay. 224 pages.

17 Q. Within that report, have you prepared a detailed timeline
18 of what each witness, each doctor, each nurse, Ms. Jones, her
19 husband, et cetera, said and did at relevant time periods?

08:49 20 A. I did.

21 Q. Slightly off topic, have you reviewed the expert reports or
22 the evaluations prepared by various IME physicians and treating
23 physicians and healthcare professionals prepared in this case?

24 A. I did.

08:49 25 Q. Has any -- have any of those individuals -- any of the

08:49 1 doctors or psychiatrists or psychologists or social workers,
2 what have you, have any of those individuals had access to the
3 full range of documentation that you had, all the depositions,
4 all the investigative reports, all of the medical records, as
08:49 5 far as you can tell?

6 A. In the reports they refer to some records. None of the
7 reports reviewed the extensive amount of materials that I had
8 the opportunity to review.

9 Q. And how long was your interview with Ms. Jones? Was it a
08:50 10 brief interview, a short meeting?

11 A. I think it was around three, three and a half hours.

12 Q. In the interview you stated that you conducted some tests
13 to evaluate her mental status -- I made some notes here -- her
14 concentration, her mood, her affect, her thought processes.

08:50 15 Why -- first -- I'll ask you about the testing in
16 just a moment. But why is it important for you, as a forensic
17 psychiatrist in this particular kind of case, to nail down and
18 test and evaluate Ms. Jones' concentration, her mood, her
19 affect, and her thought processes?

08:50 20 A. Well, it's important to understand that the individual does
21 not have a problem with attending, concentrating, focusing,
22 because if they do, it can impact upon the interview that you
23 perform and then would also have an impact upon the cognitive
24 testing that you would perform. So, you want to know what that
08:51 25 state of mind is at the time that you're doing the evaluation.

08:51 1 Q. Tell the jury, please, the different tests that you ran on
2 Ms. Jones; and, as you identify each test, explain what the
3 general object of the test is.

4 A. Sure.

08:51 5 Q. And then please explain, also, why it is relevant to this
6 particular case, what it tells you or what it doesn't tell you
7 about Ms. Jones.

8 A. Sure. Now, please remember that the testing and the
9 evaluation is done at a particular period of time. What may
08:52 10 have been months before or months after, it doesn't critically
11 say what the state of mind was at that time.

12 Now, I ask orientation. Orientation is do you
13 know what -- the date, do you know where you are, do you know
14 who you are, and do you know what we're doing here. That is
08:52 15 called "orientation." Individuals with serious mental illness
16 have trouble with the date. That's the first thing to go. The
17 next thing to go is where you are. The very last thing, which
18 means profound mental illness, is when you don't know who you
19 are.

08:53 20 The next is fund of information. And this is
21 just a general -- this is not neuropsych testing, which is a
22 different area, much more complex. This is called fund of
23 information, and it's a list of a number of items that gives
24 you a general idea of the person's intelligence. Ms. Jones
08:53 25 scored very well in fund of information. So -- and I had no

08:53 1 reason not to believe that she would score well. She's an
2 intelligent person.

3 Attention digit span, this is to identify how the
4 person is able to attend to things. And what you do is you
08:54 5 give numbers, "Four, nine, five, three."

6 They're supposed to say, "Four, nine, five,
7 three." With each one that they say correctly, you add another
8 number and add another number until they fail. Then you go,
9 "Four, five, six"; and they have to go, "Six, five, four." You
08:54 10 got to say it backward. It's harder. And you keep adding the
11 number until they fail. Ms. Jones scored very well in that
12 area, indicating that she can keep that in her mind and then
13 repeat it.

14 The next is memory. So, you read a story, "Ertha
08:55 15 Smith is a maid who works on State Street, and she was walking
16 down the street and was robbed of \$15. She reported it to the
17 police," so forth and so on. And then you ask the person to
18 repeat as much of the story as they remember. This has to do
19 with short-term memory abilities. Ms. Jones scored very well.

08:55 20 Perception of judgment and comprehension, so, you
21 have a lot of things to understand, a person's understanding of
22 our normal requirements in society and so forth, why should we
23 pay taxes, things of that type. And then you score on that.
24 She scored well on that.

08:56 25 Perception and coordination is to draw a certain

08:56 1 number of figures. This has to do with visual spatial ability.
2 So, there's six or seven figures to draw on the opposite page.
3 You ask them to draw a cube, a six-sided cube, and then a
4 clockface, putting the hours numbers in, in their correct
08:56 5 position, and then setting the hands at a certain time. This
6 is to help understand that the person visual spatial. People
7 with dementia, brain injury will skew the clock, will have
8 difficulty with the drawings. Ms. Jones performed quite well.

9 Abstract reasoning, this is can a person abstract
08:57 10 from a saying or a proverb. For instance, even monkeys fall
11 out of trees. All of these has to do with something about
12 human beings. So, "even monkeys fall out of trees" means even
13 people with experience can make mistakes.

14 Don't change horses in the middle of a stream.
08:57 15 That means -- to abstract from that is that finish what you're
16 doing before you start something else. People with serious
17 mental disorders can't abstract. So, they'll say, "Well, if
18 you're on a horse and you try to change, you'll fall in the
19 water and you'll drown." Ms. Jones did very well on that.

08:57 20 The Mini Mental Status Exam is a 30-point exam
21 used routinely throughout psychiatry and psychology and mental
22 health professionals to give an idea of the person's ability.
23 Thirty is the top score. You start getting down to 24, 20,
24 there's something going on with the brain. She scored 30.

08:58 25 Trails A and Trails B. Trails A, all you do is

08:58 1 you connect numbers: one, two, three, four, five, six. The
2 numbers are scattered all over the page, and you have to do it
3 in a certain amount of time.

4 Trails B is harder because Trails B has numbers
08:58 5 and letters. So, you've got to go 1A, 2B, 3C, 4D and so forth.
6 That has to do with executive frontal lobe function. Ms. Jones
7 performed well on those tests.

8 Similarities is another way of trying to
9 understand a person's ability to abstract. Okay? It's paired
08:59 10 items that are not similar, and they're supposed to tell you
11 something similar about them. A car and an airplane, well,
12 they both have motors and they can travel in them and so forth.
13 Wood and steel, you can build things with them. A circle and a
14 square, they're shapes and so forth.

08:59 15 The Rey 15-Item Memory Test, you tell the person
16 "I'm going to test your memory now. There's 15 items. I'm
17 only going to let you look at them for 12 seconds and then I'm
18 going to take it away and then on this piece of paper I want
19 you to write down what you remember."

08:59 20 It's an extremely simple test because all it has
21 is A, B, C, 1, 2, 3 and three -- a circle, a triangle, and a
22 square. It's a test to try to find those people who are
23 malinger memory loss. Ms. Jones did fine on that test.
24 There are some people who flunk that test, which shows that
09:00 25 they're trying to show that their memory is bad.

09:00 1 The Complicated Hand Movement Test, this was
2 created by a Dr. Muria; and it's a hand movement test. You go
3 fist, palm, and chop; and you do it three times. It's frontal
4 lobe again. Most people, it usually takes maybe two or three
09:01 5 times. You give them four chances. If they can't do it in
6 four chances, then they are unable to do that test. If I
7 remember correctly, Ms. Jones did it on the first try.

8 And then the Center for Epidemiological Studies
9 Depression Test is a self report. So, you give the individual
09:01 10 a sheet of paper, and it has questions on it and -- hold on
11 just a second. Hold on -- yes. You give them a sheet, and
12 they mark down certain things, "I've been crying more than
13 usual," things of that type. And they mark down what they do.
14 You get over 20 points, you have some -- you may have some
09:02 15 depression. You get over 30, 40 points, you have a significant
16 depression.

17 These were the tests I gave.

18 Q. What was the result on depression test?

19 A. Ms. Jones scored a 26 points out of a possible 60 points.

09:02 20 But on the test I found there were some inconsistencies on
21 marking the different areas.

22 Q. What were those inconsistencies?

23 A. All right. You have -- I think it's four -- the first one
24 is you felt this way on the two days that's -- and then the
09:02 25 next is three to four days and then five to seven days. So,

09:03 1 you've got mild, moderate, and severe.

2 On one of the questions she said that -- she
3 checked the five to seven days in the past week she felt that
4 she could not shake off the blues even with help from my family
09:03 5 and/or friends, and she checked five to seven had crying
6 spells. But then she checked three to four days out of the
7 past week she was happy and three to four days out of the past
8 week she enjoyed life, which was inconsistent with the other
9 two responses.

09:03 10 Q. The test that you ran, are these accepted within the
11 psychiatric and psychological community as valid and
12 appropriate tests for assessing a person's psychological or
13 psychiatric status?

14 A. These are -- what can I -- the best way to explain those
09:04 15 tests is that they are threshold tests. If there were
16 significant problems on these tests, you would refer that
17 individual to a neuropsychiatrist for neuropsychological
18 testing to identify and quantify the deficits that you're
19 finding.

09:04 20 Q. Did you find any deficits in Ms. Jones?

21 A. No, I did not.

22 Q. So, in sum and substance, the bottom line on the tests
23 tells you, as a forensic psychiatrist, what, as you began to
24 evaluate this case?

09:05 25 A. She was functioning normally.

09:05 1 Q. And why is that important to you in evaluating this case?

2 A. It was helpful to understand that the person I'm talking to
3 and performing an evaluation of was functioning in a normal
4 manner, that she was able to attend, to focus, to listen, to
09:05 5 interact so that the test results I can say -- I can be -- I
6 can depend upon.

7 Q. In addition, to administering tests, did you conduct an
8 in-depth interview with Ms. Jones?

9 A. I did.

09:05 10 Q. And what was noteworthy about Ms. Jones from a forensic
11 psychiatric standpoint?

12 A. Well, she was attentive, focused, concentrating. I didn't
13 see any emotional displays. Her affect was normal. She
14 appeared to be functioning as a -- actually a normal individual
09:06 15 with a more than -- more than an average intelligence.

16 Q. In terms of appearance and demeanor, did you make a
17 notation of that?

18 A. Oh, yes. She was very well dressed. She was made up, had
19 her makeup on properly. Her clothes were very fashionable.
09:06 20 She looked fine.

21 Q. Is appearance, affect, demeanor, et cetera, how someone
22 cares for themselves, is that a relevant factor that
23 psychiatrists routinely note when they interview a patient or a
24 person?

09:06 25 A. Absolutely. Appearance is very important. Body language,

09:06 1 movements, appearance, whether they're disheveled, whether the
2 man has shaved, whether the woman has combed her hair, whether
3 they have makeup on, all of this -- whether their fingernails
4 are clean, all of this gives you an idea of the person's -- how
09:07 5 they care for themselves and what care they take in their
6 appearance.

7 Q. Did you ask Ms. Jones about her pre-Iraq, her Iraq, and her
8 post-Iraq, her medical history, her social history, matters of
9 that nature?

09:07 10 A. I did.

11 Q. What did you learn of significance in interviewing
12 Ms. Jones on those subjects?

13 A. That's very broad, Mr. McKinney. I have 224 pages here.

14 Q. Well, good point.

09:07 15 A. If you can help me out, I'll be happy to explain.

16 Q. Well, let me ask you, then, in a different way. Did you
17 find items of interest in Ms. Jones' pre-Iraq history medically
18 and socially that are relevant to your evaluation of her
19 psychiatric status?

09:08 20 A. Well, I did. And I'm not sure which of these records that
21 I reviewed I can talk about.

22 Q. Well, I understand; and I'm going to try to tailor my
23 questions in such a way that we don't run afoul of any of the
24 Court's evidentiary rules.

09:08 25 Just generally I would like to establish with

09:08 1 you, first of all, if there were, in fact, records of
2 Ms. Jones' pre-Iraq history that you found to be significant in
3 connection with evaluating her psychiatric status?

4 A. Yes, absolutely.

09:09 5 Q. And did you find and review evidence in connection with
6 Ms. Jones' allegations regarding what happened in Iraq that are
7 relevant to your evaluation of Ms. Jones' psychiatric status?

8 A. Yes.

9 Q. And finally, have you reviewed documents, medical records,
09:09 10 et cetera, regarding Ms. Jones' post-Iraq medical history and
11 social history that are relevant to you in evaluating
12 Ms. Jones' psychiatric status?

13 A. Yes.

14 Q. All of this leads up to the question of whether you have
09:09 15 made findings with regard to Ms. Jones' psychiatric status.

16 A. Yes, I have made diagnoses.

17 THE COURT: Let me just insert, it is important that
18 you understand the difference between a forensic psychiatrist
19 and a treating psychiatrist. Treating psychiatrists are
09:10 20 supposed to adhere scrupulously to the notion that, first of
21 all, do no harm; and a forensic psychiatrist, that is not any
22 part of his or her mission. His mission is diagnosis. If it
23 helps, fine; but if it hurts, he's not being unprofessional in
24 the least in following his scholarly inquiry to its limits.

09:10 25 Is that fair, Dr. Scarano?

09:10 1 THE WITNESS: Yes, sir. Thanks, Judge.

2 BY MR. McKINNEY:

3 Q. Have you made findings with respect to Ms. Jones' diagnosis
4 of post-traumatic stress disorder?

09:10 5 A. Yes, I did.

6 Q. Have you made findings with respect to whether Ms. Jones is
7 consistent or inconsistent, to a forensically significant
8 extent, in how she sees herself, describes herself, how she
9 sees the events in her life, and how she describes those events
09:11 10 compared and contrasted to how others see Ms. Jones and the
11 events in her life?

12 A. Yes.

13 Q. And is Ms. Jones consistent with others or inconsistent
14 with others to a forensically psychiatric and psychiatrically
09:11 15 significant extent?

16 A. Ms. Jones is very inconsistent with the things that she
17 reports at different times to different people.

18 Q. I have scanned in your Axis I through V, and we're going to
19 put that up now as a demonstrative aid.

09:12 20 MR. McKINNEY: Is that agreeable with you?

21 MR. ESTEFAN: No objection. We've talked about this,
22 your Honor.

23 THE COURT: All right.

24 MR. McKINNEY: I'm going to provide him a copy.

09:12 25 BY MR. McKINNEY:

09:12 1 Q. Doctor, your Axis I through V will pop up on the screen
2 here in just a moment. And tell the jury, please -- they've
3 heard this before, but explain to the jury what axis -- or
4 Axes, I suppose, I through V are meant to denote and why we
09:12 5 have seen this and why we're seeing this in your evaluation and
6 why we've seen it in other psychiatrists' and psychologists'
7 evaluations.

8 A. Axis I has to do with mental disorders, affective
9 disorders, depression, bipolar disorder, psychotic disorder,
09:13 10 schizophrenia, schizoaffective disorder, so forth.

11 Axis II is personality disorders, and these
12 disorders can be very disruptive in the individual's life.

13 Axis III has to do with medical disorders that
14 can impact upon your mental state. For instance,
09:13 15 hypothyroidism is associated with depression. The treatment
16 for that depression is not an antidepressive. It's thyroid
17 medication. That's why that's important.

18 Axis IV is psychosocial stressors that can
19 influence a person's mental state. They just got fired,
09:13 20 they've been divorced, the person is facing a criminal charge,
21 so forth.

22 Axis V is to try to identify on a scale of 1 to
23 100 where the person fits in regards to their mental state.
24 Nobody is a hundred and -- which means that you are absolutely
09:14 25 perfect psychiatrically in every possible way. And zero would

09:14 1 be you're dead. So, 30 and below, you got to be in the
2 hospital because your psychiatric disorder is so bad that you
3 need to be hospitalized. That's what those numbers are for.

4 Q. Ms. Jones came in at a 65. Where is that?

09:14 5 A. That's in the upper area, the upper range. And it's 65
6 because of the anxiety and the -- the stress of this legal
7 matter. So, she was coming to see somebody who's going to
8 write a report about what he finds. She was facing a
9 deposition coming up, those type of stressful things can --
09:15 10 should be accounted for and reduced her score to 65.

11 Q. I'm going to ask you a couple of questions and then get
12 into the Axes I through V.

13 You told us you conducted this battery of tests
14 during Ms. Jones' interview with you and she scored very well
09:15 15 across the board. And now you're telling us that Ms. Jones has
16 various issues that you have diagnosed. And, so, I would like
17 to know and perhaps others would like to know how it is that
18 someone can come into your office and score well on, I think,
19 15 or so different tests, have an organized mind, a responsive
09:16 20 mind, be attentive and alert and intelligent and communicate in
21 a normal, appropriate fashion and, yet, you have diagnosed both
22 affective and personality disorders, which we'll get into in a
23 minute.

24 How do you reconcile those two apparent
09:16 25 discrepancies, or inconsistencies?

09:16 1 A. Well, the adjustment disorder is just a -- stressful events
2 that many of us face every day. So, we can function normally
3 despite having certain stresses in our life.

4 Personality disorder is a disorder that is
09:17 5 long-standing for many years, that particularly in Ms. Jones is
6 a problematic area of her life that's never been fully
7 addressed by any mental health professional.

8 Q. Now, in reviewing the various post-Iraq treaters' and
9 independent medical evaluators' reports, has Ms. Jones
09:17 10 consistently denied a history of anxiety and depression?

11 A. Prior to the --

12 Q. Prior to Iraq?

13 A. -- the events that occurred in Iraq, yes.

14 Q. And is that consistent with her actual medical history?

09:18 15 A. No.

16 Q. It a small inconsistency or a medically significant
17 inconsistency?

18 A. It's a big inconsistency because somatization disorder,
19 which is one of the areas in Axis I, is an anxiety disorder
09:18 20 that causes distress and dysfunction in individuals' lives
21 and -- for which she received treatment.

22 Q. Does Ms. Jones, likewise, in communicating with her
23 post-Iraq treaters and independent medical evaluators,
24 consistently deny a pre-Iraq history of sexually transmitted
09:18 25 diseases?

09:19 1 A. Yes. There are a certain number of records in which she
2 denied having sexually transmitted diseases prior to the
3 alleged events that occurred on July 28, 29 of 2005.

4 Q. Why is that significant, if it is significant?

09:19 5 A. Well, that's an inconsistency, either you have it or you
6 don't have it. And if you had it, why don't you say, yes. If
7 a doctor like Dr. Schulz asks, "Do you have a sexually
8 transmitted disease" and they say no and you do, that is a
9 serious inconsistency.

09:19 10 Q. You've noted on Axis III that her sexually transmitted
11 diseases are medical conditions which impact on Axis I and
12 Axis II. Do I understand that correctly or not?

13 A. That's correct.

14 Q. All right. If Ms. Jones were to have advised her various
09:20 15 post-Iraq treaters of her prior history of sexually transmitted
16 diseases, would that have been a relevant factor in how those
17 physicians approached -- or should that have been a relevant
18 factor in how those various treaters approached the diagnosis
19 and management of her condition, if any, post-Iraq?

09:20 20 A. I think you're going to have to ask that question again,
21 Mr. McKinney. I lost it somewhere.

22 Q. Well, I do that from time to time.

23 Because Ms. Jones was not forthright with respect
24 to her pre-Iraq history of sexually transmitted diseases, you
09:20 25 would have noted this to be a significant factor on Axis III,

09:21 1 correct?

2 A. Yes.

3 Q. If the pre-Iraq history had been properly reported to her
4 various treaters and independent evaluators who were performing
09:21 5 an Axis I through V evaluation, would you have expected those
6 treaters and those evaluators to have perhaps taken a different
7 approach or a modified approach with respect to evaluating her
8 mental status given the presence and not the absence of a
9 pre-Iraq history? And if that's still too long of a question,
09:21 10 I'm just going to move on.

11 A. I really don't know how to answer that one, Mr. McKinney.

12 Q. All right. Finally, are you aware that on December 22nd of
13 2004, Ms. Jones alleged, in a medical report to Dr. Terri
14 Scott's physician's assistant, that she was sexually assaulted
09:22 15 at work by a manager? Are you aware of that?

16 A. Yes.

17 Q. And have you seen the subsequent records, various notations
18 where Ms. Jones gave a history or referred to, quote, a rape,
19 close quote, which occurred roughly in December of 2004?

09:22 20 A. Yes.

21 Q. Did Ms. Jones consistently and persistently deny any prior
22 history of sexual assault to her post-Iraq treaters and
23 independent medical evaluators?

24 A. Yes.

09:22 25 Q. And would -- if it was true, would an actual reported

09:22 1 sexual assault have been relevant in assessing whether
2 Ms. Jones was giving an accurate history regarding events in
3 Iraq and whether Ms. Jones, in fact, had post-traumatic stress
4 disorder?

09:23 5 A. She was reporting these to treating mental health
6 professionals. And I don't -- the information that she may
7 have been raped prior to the alleged rape in Iraq would have
8 been a factor that they would have noted; but I don't know
9 whether that would have changed the treating physician or
09:23 10 mental health professional's treatment, unless they had all the
11 records and all the pre stuff and all the inconsistencies that
12 I was able to see. In other words, the treating person is not
13 interested in all of that. They're interested in right now
14 what's wrong with you, what are you suffering with, what is
09:24 15 your complaints, and then maybe I can give you something that
16 can help you.

17 Q. Before we get into the specifics of your Axis I and Axis II
18 findings, I would like you to assist us, if you can -- you
19 describe Axis I as an affective disorder and Axis II as a
09:24 20 personality disorder. What's the difference?

21 A. Axis I is affective and psychotic disorders; in other
22 words, depression, bipolar disorder, a general anxiety
23 disorder, post-traumatic stress disorder; on the depression
24 anxiety scale, somatization disorder; on the psychotic scale,
09:25 25 schizophrenia, schizoaffective disorder, things of that type.

09:25 1 These are major psychiatric disorders.

2 Axis II is a personality disorder. A personality
3 disorder is a pervasive way of behaving over periods of time.
4 It's the -- type of a characterological type of thing. And
09:25 5 that can cause you great distress. Borderline personality
6 disorder, they can't form relationships, they're distrustful to
7 everybody, they have impulsivity, they cut themselves just to
8 feel something. This causes great distress in their life. And
9 that's the difference between the Axis I and the Axis II
09:26 10 diagnoses.

11 Q. Let's look at your Axis I diagnosis; and I would like to
12 talk about the first one, adjustment disorder, first. What is
13 adjustment disorder, and why have you stated in writing as an
14 independent expert that Ms. Jones has features of or suffers
09:26 15 from an adjustment disorder?

16 A. Ladies and gentlemen, we all have had adjustment disorders.
17 They're part of life. You got fired, you're having trouble
18 with your girlfriend and your spouse, you just were in a -- you
19 just drove out your new car from Ford and some guy hits you and
09:27 20 smashes into your car, that can cause a period, usually not
21 long, where you can have a certain anxiety or a certain down
22 feeling. It can be problematic enough, if you're going through
23 a divorce or something of that type, that you might go see a
24 therapist for therapy or you may see a psychiatrist and get a
09:27 25 pill of some type for a short period of time to get you over

09:27 1 it.

2 Adjustment disorder in this instance was anxiety
3 secondary to legal stress of this case, the upcoming deposition
4 she would have to go through and so forth. It's a mild type of
09:28 5 mental problem that occurs not uncommonly in our lives.

6 Q. The next thing I want to talk about -- or I want you to
7 talk about, please, is you have noted that Ms. Jones exhibits
8 features of somatization -- say that, please.

9 A. Somatization disorder.

09:28 10 Q. What is it, and why do you say that Ms. Jones has features
11 of -- and you'll have to say it again for me.

12 A. Somatization disorder. Somatization disorder is a type of
13 anxiety disorder in which the individual, under stress, might
14 have or complains of physical problems. And it has to be in a
09:28 15 number of areas, abdominal pain, pelvic pain, menstrual pain,
16 headaches, backaches; and there has to be a pseudoneurological
17 problem.

18 "Pseudoneurological" means I can't lift my arm
19 but, when the doctors go through all the tests, there isn't
09:29 20 anything wrong. So, it's a pseudoneurological problem.

21 At the time in which all of these things are
22 being manifested, Ms. Jones is going through a difficult part
23 of her life. Parents are being divorced. And she's
24 manifesting problems of a physical nature that, in my view, as
09:29 25 I go through these records, were really psychological problems

09:30 1 manifested by physical complaints.

2 Q. We're going to talk about malingering post-traumatic stress
3 disorder in just a moment. I would like to now switch to the
4 Axis II diagnoses where you identify features of narcissistic
09:30 5 and histrionic personality disorder.

6 Describe for the jury, please, what these two
7 disorders are and generally why you have noted that Ms. Jones
8 has features of these two disorders.

9 A. Often personality disorders are in combination. Antisocial
09:30 10 personality disorder and narcissistic personality disorder are
11 very common. As you know, the antisocial is the criminal type
12 that doesn't abide by the rules and regulations of society.
13 Narcissistic personality disorder is a feeling that or belief
14 or presentation that you're better than other people, there's
09:31 15 something superior about you. You present yourself in a more
16 inflated way.

17 Histrionic and hysterical personality disorder
18 has to do mostly -- though men have it, the majority of
19 individuals with histrionic and hysterical personality
09:31 20 disorders are females. They present themselves in a more
21 grandiose manner. They make -- they present things about them
22 that show that they are in the upper levels of their sister
23 females; and they'll say things that, when you review records,
24 just aren't true.

09:32 25 Now, the histrionic, hysterical female usually

09:32 1 grows up in a dysfunctional family where problems are
2 occurring. The hysterical, histrionic female binds closely
3 with the father. She is daddy's little girl. She's in
4 competition with the mother. So, she can have fantasies about
09:33 5 how she could do a better job caring for the father than the
6 mother can. She can have those fantasies, and that's fine
7 until a divorce occurs.

8 When the divorce occurs, two very traumatic
9 things happen. Number one, the mother has lost. So, the
09:33 10 father -- she can still have her relationship, still be daddy's
11 little girl. But when daddy finds another girl, it's like a
12 put-down for the hysterical, histrionic female. What is
13 important is that she, of course, cannot act on her fantasies
14 because of the taboo of incest and in the fact that she has an
09:34 15 older, bigger mother who she's in competition with. It's the
16 reverse of the Oedipus complex where the boy wants to out-do
17 the father for the mother's attention.

18 When you put both of those things together,
19 narcissistic, histrionic, and hysterical personality disorder,
09:34 20 this causes problems in the girl's life. In other words, she
21 has trouble with relationships. She's in competition with
22 other women, and that essentially is -- are the features of the
23 Axis II diagnosis that I said -- I didn't make an absolute
24 diagnosis because you have to have that individual in treatment
09:35 25 over a long period of time.

09:35 1 This is an individual that, when the doctor says
2 that you have this problem, they'll leave that doctor and
3 they'll go to somebody else. So, they'll go doctor shopping
4 until they find somebody who can agree with their
09:35 5 interpretation of what's going on.

6 Q. Can you give us some examples, from the materials that you
7 have reviewed and the notes that you've made in your lengthy
8 report, of Ms. Jones' manifesting or exhibiting the
9 narcissistic and histrionic personality disorder?

09:35 10 A. Sure. Ms. Jones said she graduated from high school when
11 she was 16 to a number of individuals. She was actually 18.
12 She told me she graduated in the top 5 to 10 percent of her
13 class. When I looked up her class, there were 859 graduates.
14 She was number 252, which put her in the 29th percentile.

09:36 15 She got her undergraduate from the American
16 Military University, which is a subsidiary of the American
17 Public University System; and she got her master of business
18 administration with a grade point average of 3.86 and told me
19 that she graduated summa cum laude. APUS and the Military
09:37 20 Public University does not use the Latin terms. You can
21 graduate with honors, and then you're invited to belong to an
22 honor society. These are -- these are indications of trying to
23 inflate who you are to an upper level.

24 Q. With respect to some of the interpersonal conflicts that
09:37 25 Ms. Jones has had, let me direct your attention to the incident

09:37 1 in San Diego. Were there any examples of how Ms. Jones
2 conducted herself regarding the incident in San Diego that are
3 significant from the standpoint of assessing the histrionic
4 personality disorder?

09:38 5 A. Are we talking about the bowling alley incident?

6 Q. Yes. Yes.

7 A. Okay. I believe it was April the 8th of 2007, Ms. Jones
8 and her husband were at the bowling alley, drinking. And the
9 records indicate that her husband was ready to leave and she
09:38 10 wasn't. According to the people at the bowling alley,
11 Ms. Jones ran out one door with her husband chasing after her.
12 She comes in through another door screaming, "My husband has
13 hit me."

14 Then she reports to certain individuals different
09:39 15 stories, he punched her in the face, he punched her in the
16 abdomen, earlier in the day had hit her with a baseball bat.
17 She goes to the hospital; and as they're rolling her in, she's
18 screaming and yelling, "I'm five months pregnant." Of course,
19 she wasn't five months pregnant. Her -- the nurse observed
09:39 20 that her abdomen was quite flat, and her pregnancy test was
21 negative.

22 She allowed her husband, of course, to be picked
23 up by the police. The investigation of spousal abuse, the
24 military -- a military protective order was instituted. This
09:39 25 occurred on the 8th. The military protective order was

09:40 1 released on the 12th.

2 She gave different stories to different people.
3 She relented and then called the investigators and said, "No,
4 he didn't hit me; and I have proof because I have my medical
09:40 5 record that shows that I -- there were no injuries that I had."

6 She told me that he grabbed her arm and dragged
7 her out of the bowling alley. As I told you, the observers
8 there saw her running out and her husband chasing her.

9 She told the social worker her mother was going
09:40 10 to come, she's very frightened. This is a woman, don't forget
11 now, that has complained that she has been severely and
12 horribly assaulted and raped by five -- four or five firemen.

13 When I asked her, "Well, gosh, this is the only
14 man you've been able to trust all these years. How come -- how
09:41 15 come this wasn't more of a significant event for you?"

16 She says, "Well, he only did it once."

17 But really interesting, and it shows what you
18 might call information management, the military protective
19 order was nullified on April the 12th.

09:41 20 On April the 11th, she's seeing her therapist.
21 Not one word about the events that occurred in the bowling
22 alley. This is the type of things that you expect and you see
23 from hysterical, histrionic, narcissistic personality
24 disordered individuals.

09:42 25 Q. You used the phrase "information management." And is that

09:42 1 something that you have observed in other aspects of Ms. Jones'
2 life as reflected in the various records and depositions,
3 et cetera, that you have reviewed?

09:42 4 A. On review of the records, and individuals with this type of
5 personality disorder, there is information management and
6 selective memory.

7 Q. Explain what that means. Explain whether you've seen one
8 or two or many examples of information management and selective
9 memory in your review of the records.

09:43 10 A. Yes. The information management would be telling health
11 providers after Iraq that you didn't have sexually transmitted
12 diseases prior to the alleged event. Information management is
13 that you tell certain individuals and providers that you
14 developed venereal warts or Human Papilloma virus after the
09:44 15 alleged rapes in Iraq.

16 Selective memory is -- let's see. One example
17 would be there is a string of e-mails between Ms. Jones and her
18 mother in regard to the supervisor when she was working for KBR
19 before she went to Iraq, for which she has no memory of those
09:44 20 e-mails. And she says it was five years ago. However, she
21 remembers in critical detail a medical report ten years ago
22 because that medical report was saying something that she felt
23 wasn't appropriate. That's selective memory. There are other
24 areas, they don't come to mind; but as we go on, they might.

09:45 25 Q. Well, it's a lengthy report. We'll touch on some of them,

09:45

1 but we're not going to spend the day at it.

2 Let's move now to your review of Ms. Jones'
3 account of what transpired in Iraq.

4 A. We haven't gone over the post-traumatic stress disorder.

09:45

5 Q. We're going to get to that.

6 A. You're going to do that later?

7 Q. We're going to get to that.

8 A. Okay. Sure.

09:46

9 Q. If it assists, you might want to take a look at Page 154 of
10 your report where you summarize some of the events that were in
11 place the morning that Ms. Jones alleges she woke up and had
12 her encounter with Charles Bortz.

13 A. Okay. I'm on Page 154.

09:46

14 Q. If I could draw your attention to the second full paragraph
15 there in the middle of the page, if you could review that
16 briefly. And for the record, you have not memorized this
17 complete report?

18 A. No, I have not.

09:47

19 Q. All right. Why don't you take a look at that paragraph
20 briefly --

21 A. Okay.

22 Q. -- and then --

23 A. Yes, I see it. Starting "Sexually active" --

24 Q. No. The next paragraph.

09:47

25 A. Oh, okay.

09:47

1

Yes. Okay. I have reviewed it.

2

Q. Based upon your review of the records, the night before

3

Ms. Jones -- or the night of Ms. Jones' alleged assault, you

4

understand that she had had some sort of interpersonal conflict

09:47

5

with a young woman named Sara Simco?

6

A. Yes.

7

Q. And thereafter, Ms. Jones presented at a social gathering

8

attended by a number of people, including my client, Charles

9

Bortz?

09:48

10

A. I believe Sara Simco was there and that's -- when something

11

was said, Ms. Simco leaves. She goes to apologize and then

12

comes back.

13

Q. Yes. At the time of the social gathering, Charles Bortz

14

had a girlfriend, Beneta Brumatti?

09:48

15

A. Yes.

16

Q. Who was on vacation or on leave and not in Camp Hope?

17

A. Yes. And she was supposed to return either the next day or

18

day after. She was soon to return.

19

Q. And Ms. Jones had, the day before, been transferred to

09:48

20

Ms. Brumatti's department and would be Ms. Brumatti's coworker?

21

A. She would be in the same department as Ms. Brumatti at the

22

USMI IT.

23

Q. Now, you're not here to express an opinion as to whether

24

the encounter between Ms. Jones and Mr. Bortz was consensual or

09:49

25

not consensual. You understand that?

09:49

1 A. Yes, I do.

2 Q. However, referring now to Page 154, you're picking up there
3 at the point in time where Ms. Jones has, the next morning,
4 asked Mr. Bortz, A, whether they had sex and, B, whether the
5 sex was protected. Do you --

09:49

6 A. Correct.

7 Q. What is the status of Ms. Jones' situation based upon your
8 review of all of the records, all of the testimony of all of
9 the witnesses, et cetera? What is Ms. Jones faced with that
10 morning when she wakes up and gets the answer to those two
11 questions?

09:50

12 A. Well, she's in a predicament.

13 Q. Please explain.

14 A. She has two sexually transmitted diseases, genital warts,
15 human -- Herpes Simplex Virus, and genital warts, Human
16 Papilloma Virus.

09:50

17 Q. Did you happen to review Ms. -- in detail Ms. Jones'
18 gynecological history regarding the course of those two
19 diseases right up until the time she departed for Iraq?

09:50

20 A. I did.

21 Q. Were the diseases in the active stage at that time?

22 A. I believe one of them was. They were very serious
23 disorders in that outpatient treatment wasn't being ineffective
24 [sic]. She had to be hospitalized one time for the treatment
25 of the herpes infection; and at another time she had to have

09:51

09:51 1 laser surgery, cryotherapy, and so forth for the genital warts.

2 Q. So, in plain words, Doctor, what potential problems was
3 Ms. Jones facing on an ongoing basis having slept with Beneta
4 Brumatti's boyfriend and having -- and being the carrier of two
09:51 5 sexually transmitted diseases and having apparently learned or
6 confirmed that the sex was unprotected?

7 A. Well, of course, she had no problem because she was
8 unconscious; and being unconscious, she couldn't alert
9 Mr. Bortz that she had sexually transmitted diseases.

09:52 10 Q. Do you believe that her history of being unconscious was --
11 I don't want to run afoul of the Court's ruling here.

12 Do you accept as valid her history of being
13 unconscious?

14 A. No.

09:52 15 Q. Refer now, please, to Page 152, the bottom paragraph.

16 A. Yes.

17 Q. What opinion do you put forth on Page 152 in the bottom
18 paragraph?

19 A. This was her interaction with Pete Arroyo, where in my view
09:53 20 she's recruiting Mr. Arroyo to test out her theory of the date
21 rape drug and being unconscious and saying she doesn't know
22 what happened, what if all these guys had sex with me? And, of
23 course, Mr. Arroyo becomes quite concerned and takes her to see
24 the physician's assistant, Kristen Rumba.

09:53 25 Q. Based upon your review of the records, did Ms. Jones'

09:54 1 history -- that is, did her statements regarding the date rape
2 drug, the number of assailants, et cetera, et cetera -- did
3 that evolve over time or was it consistent?

4 A. No, no. That is an evolving -- as the entire episode
09:54 5 evolved over time.

6 Q. Initially what did Ms. Jones report as having been the
7 scenario that resulted in her alleged assault?

8 A. The initial to Ms. Rumba and to Dr. Schulz was she was in
9 her room about 10:00 o'clock at night sleeping when four to
09:54 10 five firemen came and knocked on her door and she invited them
11 in and they -- one of them mixed a drink and she had two sips
12 and the next thing she remembered was waking up at 6:30 in the
13 morning, feeling physically injured, went to the bathroom,
14 bleeding profusely between her legs; and then over time other
09:55 15 facts were added to the story.

16 Q. The history that Ms. Jones gave to Kristen Rumba and
17 Dr. Jodi Schulz, in either of those histories was Ms. Jones
18 able to identify her assailants?

19 A. If I remember correctly, she did not identify them to Rumba
09:56 20 and to Dr. Schulz.

21 Q. Did you find any evidence whatsoever in the record that
22 Ms. Jones did not know and recognize Charles Bortz when she saw
23 him that morning?

24 A. Well, there are a number of records like the letter to --

09:56 25 Q. Senator Boxer --

09:56 1 A. Senator Boxer, that's right. I couldn't remember her name.
2 She woke up in the morning with a nude firefighter lying next
3 to her whom she now knows to be Charles Bortz. I think in her
4 testimony before Congress she says that a nude -- or a
09:56 5 firefighter was in her room that she now knows to be Charles
6 Bortz. Well, she knew it was Charles Bortz all along.
7 Q. And you say that she knew it was Charles Bortz all along.
8 Why do you say that?
9 A. Well, because when she woke up, she talked to Charles Bortz
09:57 10 and asked Charles Bortz, "Did we have sex?"
11 And when he said yes, "Well, was it protected?"
12 "No."
13 And I think she talked to Pete Arroyo and said to
14 Pete Arroyo that Bortz was in her room.
09:57 15 Q. All right. Now, after speaking with Dr. Schulz and Dr. --
16 and Ms. Rumba -- and, by the way, what did she say specifically
17 was the circumstances under which she had been allegedly
18 drugged and raped to those two women?
19 A. Well, if I remember correctly, it was that the firefighters
09:58 20 came into her room, they knocked on the door, woke her up and
21 they mixed a drink. One of the firefighters, we're not sure
22 who it was, might have been Matthew Ryan -- Matt Ryan said,
23 "Don't worry, I'm not putting ruffies in here. I'm saving
24 those for Dubai." And so, that implanted the roffie thought.
09:58 25 And then she -- the next thing she knew is that she woke up,

09:58 1 6:30.

2 Q. After being examined by Dr. Schulz, Ms. Jones was visited
3 by a lady named Jamie Armstrong. Do you recall that?

4 A. Well, rather than visited, she was taken to -- from the
09:59 5 hospital to human resources and from human resources, Jamie
6 Armstrong and several others walked her to this hooch, that
7 they call it, a hooch, some type of a structure, in which they
8 wanted her -- they -- they had assigned to her and her alone.
9 There was nobody else in the hooch.

09:59 10 From what I understand, there's a room on one
11 side, a room on the other, and there's a bathroom in between.
12 There was nobody in the other side, it was just Ms. Jones in
13 that room; and that's where they put her for her own
14 protection.

09:59 15 Q. Now, when Ms. Armstrong and Ms. Jones were in the hooch
16 together, is it your understanding that Ms. Armstrong took a
17 statement from Ms. Jones?

18 A. Yes.

19 Q. And the difference -- or is the difference between the two
10:00 20 reports that Ms. Jones gave to Kristen Rumba and Dr. Schulz,
21 those are medical histories. The report given to Ms. Armstrong
22 was the first in the official -- or unofficial investigation of
23 Ms. Jones' allegations?

24 A. My understanding is Mr. Goodgine, the security director,
10:00 25 asked Ms. Jones to please, while it is fresh in your mind,

1 would you please write a statement; and Jamie Armstrong was
2 there to assist. That was my understanding of the records.

3 Q. With an investigation in process or beginning, what
4 difference -- what important differences, if any, took place
5 between the reports that Ms. Jones gave to Dr. Schulz and
6 Ms. Rumba versus the report that Ms. Jones gave to Jamie
7 Armstrong?

8 A. If I remember correctly, Mr. McKinney, the report that
9 she -- or the statement she made in the hooch with Jamie
10 Armstrong was that she joined a group of KBR employees outside
11 that were socializing.

12 Q. As opposed to having men come to her room?

13 A. That's correct.

14 Q. Just a little bit off topic; but to perhaps give some
15 background data, you're called as an expert witness in criminal
16 matters from time to time?

17 A. Most of the time.

18 Q. And you are frequently called as an expert witness -- as an
19 independent witness or sometimes even by the court?

20 A. Often by the court.

21 Q. Okay. As a part of your role in criminal matters, do you
22 find yourself reviewing investigative reports prepared by
23 police officers or DPS troopers or FBI agents or people of that
24 nature?

25 A. I always ask for investigative reports.

10:02 1 Q. Let me make sure I have the right exhibit number.

2 MR. McKINNEY: I'm having an exhibit malfunction.
3 Good time for the morning break?

4 THE COURT: I think it probably is.

10:03 5 Would all please rise for the jury. 15 minutes,
6 please.

7 *(Recess was taken from 10:03 a.m. to 10:18 a.m.)*

8 *(Jury present)*

9 THE COURT: Members of the jury, please be seated.

10:18 10 You may resume your inquiry.

11 MR. McKINNEY: May it please the Court.

12 BY MR. McKINNEY:

13 Q. The exhibit malfunction has been fixed.

14 And before I show you that exhibit, I would like
10:19 15 to review the bidding with you on the histories that Ms. Jones
16 gave, beginning with her initial discussion with Pete Arroyo
17 and up through the Jamie Armstrong statement.

18 At Page 49 of your report and close to the
19 bottom -- the middle -- lower middle portion, you quote Pete
10:19 20 Arroyo's testimony as having Ms. Jones report to him, quote,
21 "Well, if I had just one drink and I didn't even finish that
22 drink, you know, what happened? What if, you know, the other
23 guys had sex with me? I don't know," close quote.

24 And then we have the statement to Ms. Rumba in
10:19 25 which Ms. Jones advises Ms. Rumba that four men, four

10:20 1 firefighters, came to her room, gave her a drink, she remembers
2 nothing. And then the statement to Dr. Schulz that five men,
3 five firemen, came to her room, gave her a drink and she
4 remembers nothing.

10:20 5 And then when the statement is requested as a
6 part of an investigation, Ms. Jones goes to the social
7 gathering where there were, of course, many witnesses and
8 states that she was given a drink, had a couple of sips and
9 remembers nothing.

10:20 10 Your records and your review of the records
11 agree, essentially, with those -- with that developed pattern
12 or that developed scenario, that evolving scenario?

13 A. Yes.

10:21 14 Q. And I asked you before the break if, as a part of your
15 function as an independent witness in criminal matters, whether
16 you are from time to time given the investigative report. And
17 I believe you -- that is, the official investigative report by
18 the police officers or whoever is working for the state or the
19 government. And I believe you said you did?

10:21 20 A. Yeah. I always review the police investigator reports.

21 Q. All right. Doctor, I'm not sure if Bortz Exhibit 69 is a
22 part of your records.

23 MR. MCKINNEY: May I approach the witness, please,
24 your Honor?

10:21 25 THE COURT: You may, yes.

10:21 1 MR. McKINNEY: Could we please put Bortz 69 up on the
2 screen?

3 BY MR. McKINNEY:

4 Q. Doctor, I particularly want to draw your attention to these
10:21 5 two paragraphs right here. Can you read them on the screen, or
6 would you rather have this copy?

7 A. I would rather have this. Will this be a problem for you?

8 Q. No, not at all, because I'll have the screen.

9 MR. McKINNEY: The bottom -- there's three highlighted
10:22 10 paragraphs. The bottom two, would you please enlarge those?

11 A. I didn't know you could make it big.

12 BY MR. McKINNEY:

13 Q. It's a crazy technological world we live in. What can I
14 say? All kinds of wizardry going on.

10:22 15 A. I just reviewed it. No, this was not a part of the
16 information that I was given.

17 Q. And the sum and substance, the middle paragraph in this
18 letter -- or the first one that's blown up, recites Ms. Jones'
19 history of the party, getting some drinks, going to bed with
10:23 20 Bortz, et cetera.

21 A. Yes.

22 Q. That would -- that is the report that she gave to Jamie
23 Armstrong?

24 A. Correct.

10:23 25 Q. The second paragraph here refers to the report that

10:23 1 Ms. Jones gave to the army doctor in which men came to her
2 room?

3 A. Correct.

4 Q. Based on your experience as an independent forensic
10:23 5 psychiatrist reviewing police investigative reports, would it
6 be a normal part of an investigator's duty to speak with
7 someone like Ms. Jones, a complaining witness, and ask her to
8 address inconsistencies or perceived inconsistencies in her
9 story?

10:24 10 A. Yes, of course.

11 Q. And what notation did the investigators make here regarding
12 Ms. Jones' explanation for the inconsistency between the story
13 she gave to Dr. Schulz and the story she gave to Jamie
14 Armstrong?

10:24 15 A. Well, she says that the -- that Dr. Schulz was pressuring
16 her for a story as to what happened. I don't know how that's
17 related to what she told her.

18 Q. Well, exactly. She states that she lied to Dr. Schulz
19 because -- or she is reported to have stated that she lied to
10:25 20 Dr. Schulz because she was under pressure from Dr. Schulz to
21 give an account of what happened?

22 A. That's what it says, yes.

23 Q. Now, is that -- if the reporter, the person who wrote
24 that -- and we don't know who wrote it because the Justice
10:25 25 Department didn't give us the second page of the letter. But

1 if the person who wrote that is accurately writing down what
2 Ms. Jones said and did, is Ms. Jones' explanation the type of
3 explanation that is consistent with a histrionic personality
4 disorder?

5 A. A statement just standing by itself, Mr. McKinney, is not
6 something you can make that diagnosis of. She made different
7 statements about how the statements in Rumba and Dr. Schulz'
8 report indicated that firemen came to her -- her room that are
9 also different from this.

10 Q. But in terms of her blaming Dr. Schulz for her having given
11 an erroneous report --

12 A. I got it.

13 Q. -- is that the type of behavior that is consistent with --
14 not diagnostic of, but consistent with a histrionic personality
15 disorder?

16 A. Yes, of course, because they put the blame -- they never
17 take responsibility themselves. Anything that you can bring up
18 that shows negatively on a narcissistic, histrionic, hysterical
19 type of person, they will then shove that responsibility on to
20 somebody else.

21 Q. Assume for the purposes of -- for the purpose of the next
22 couple of questions I'm going to ask you that one of the points
23 that Ms. Jones has made often in this trial is that she woke up
24 in bed -- well, first of all, that she took two sips of a drink
25 and remembers absolutely nothing --

10:27

1 A. That's correct.

2 Q. -- until she woke up the next morning, per her testimony
3 before this jury, alone in her top bunk -- she has emphasized
4 this point several times. Just assume what I am telling you --

10:27

5 A. Oh, okay.

6 Q. -- is the evidence so far.

7 A. Okay.

8 Q. Assume that Ms. Jones found herself fully unclothed, which
9 is not customary, recalls climbing down the ladder, recalls
10 being in great pain, her breasts, her female lower anatomy,
11 recalls going to the bathroom and many, many details of what
12 she observed and felt, et cetera, et cetera.

10:28

13 A. Uh-huh. Yes. Okay.

14 Q. And then assume that she has testified and -- I think the
15 point has been underscored often in the trial that when she
16 returned to her room, she found a man in her lower bunk.

10:28

17 A. Okay.

18 Q. Not lying in bed with her, as stated in the Barbara Boxer
19 letter, but in her lower bunk. All right?

10:29

20 A. Yes.

21 Q. Now, assume further that her regular treating counselor,
22 Dawn Nelson, whose records I believe you reviewed --

23 A. I did.

24 Q. -- testified Thursday in this courtroom. And assume that
25 Ms. Nelson reported a history from Ms. Jones, including two

10:29

10:29 1 general fact patterns. The first fact pattern is that
2 Ms. Jones reported to Ms. Nelson that after she took the two
3 sips she recalled losing sensation -- that is, she described a
4 gradual process -- or not a -- perhaps not a gradual process
10:29 5 but a process of losing her ability to see, hear, remember,
6 focus, until she had no further memory.

7 Do you see the difference between the process
8 following the two drinks and the instant loss of memory?

9 A. I do see the difference.

10:30 10 Q. Assume further that Ms. Nelson told us that the history
11 that Ms. Jones gave with respect to waking up that morning is
12 that Ms. Jones awoke with -- nude and lying in bed with her,
13 nude, was a man in the top bunk, who later turned out to be
14 Charles Bortz, and that this man reported to her that not only
10:30 15 had he had unprotected sex with her the night before but that
16 four or five other men had had sex vaginally and anally with
17 Ms. Jones and that is how Ms. Jones came to learn that she had
18 been sexually assaulted by multiple assailants.

19 Can you assume all that for us?

10:31 20 A. Okay.

21 Q. If those assumptions are borne out by the evidence, are the
22 various histories of what happened that night, the assumptions
23 I've asked you to make with respect to Ms. Jones' alleged lost
24 of consciousness, how she awoke, the circumstances under which
10:31 25 she awoke, are those -- if the jury finds them to be different,

1 are those different scenarios consistent or inconsistent with a
2 narcissistic and histrionic personality disorder?

3 A. If we assume that Dawn Nelson's report is related to
4 information that was provided to her by Ms. Jones, they're
5 totally inconsistent with multiple reports in other records.
6 And that is part of changing stories, information monitoring,
7 selective memory, all of that has to do with a person with a
8 narcissistic, histrionic, hysterical personality disorder.

9 Q. We're now going to talk about post-traumatic stress
10 disorder.

11 A. Okay.

12 Q. And the opinion that you have expressed --

13 MR. McKINNEY: If we could go back to the scan that I
14 asked you to put up.

15 BY MR. McKINNEY:

16 Q. The opinion that you have expressed, the finding that you
17 have made with respect to post-traumatic stress disorder, is
18 that Ms. Jones is malingering --

19 A. Yes.

20 Q. -- post-traumatic stress disorder?

21 A. Right.

22 Q. What does "malingering post-traumatic stress disorder"
23 mean? The operative word being "malingering." What does that
24 mean?

25 A. Sure. Malingering is not a mental disorder, but it is a

10:33 1 diagnosis in the Diagnostic and Statistical Manual of mental
2 diseases that is an intentional fabrication or exaggeration of
3 an event for a specific purpose.

4 Q. Tell us generally -- and then we will get into the
10:33 5 specifics. Tell us generally why you do not believe Ms. Jones
6 has post-traumatic stress disorder.

7 A. Mr. McKinney, you want the short version --

8 Q. The short version --

9 A. -- I'm going to have to use this --

10:34 10 Q. Well --

11 A. The short version is, if you are unconscious, meaning that
12 you are not present consciously at the time a traumatic event
13 occurs, you can't meet the threshold, or the door that you have
14 to get through, to have a diagnosis of post-traumatic stress
10:34 15 disorder. That's it.

16 Q. Well, now, Ms. Jones says that the trauma of realizing what
17 had happened to her that night -- and not only Ms. Jones, her
18 therapist, Ms. Nelson, and perhaps -- oh, and the retained
19 expert, Dr. Blank, from Atlanta all say that it's perfectly
10:35 20 fine to not actually experience the traumatic event but to
21 learn about it later. Do you agree or disagree? And as they
22 say in school, explain your answer.

23 A. I absolutely and totally disagree. This is the Diagnostic
24 and Statistical Manual of Mental Disorders which psychiatrists
10:35 25 and psychologists use to make diagnoses. There's a threshold

10:36 1 you have to get through before you can diagnose post-traumatic
2 stress disorder. Of all the mental disorders in forensic
3 psychiatry, this is the easiest diagnosis to malingering because
4 it's totally subjective.

10:36 5 The threshold is this, that the person has been
6 exposed to a traumatic event in which both of the following
7 were present. The person experienced, witnessed, or was
8 confronted with an event or events that involve actual or
9 threatened death or serious injury.

10:36 10 That means they have to be conscious.

11 And the person's response involved intense fear,
12 helplessness, or horror. You can't have that, you can't
13 experience fear, helplessness and horror, if you're
14 unconscious.

10:37 15 Now, the other problem with post-traumatic stress
16 disorder is that anybody can get on the Internet and punch in
17 "PTSD" or "post-traumatic stress disorder" and you'll get all
18 the symptoms.

19 You can't get through the threshold to make this
10:37 20 diagnosis.

21 Q. I learned on the break that you had requested the flip
22 chart up there --

23 A. I did.

24 Q. All right. And you requested that in connection with your
10:37 25 findings regarding the fact that Ms. Jones is malingering PTSD?

10:37 1 A. Yes. Because we have to talk about memory, post-traumatic
2 stress disorder, how memories are embedded, what a true person
3 with post-traumatic stress disorder has, and the difference
4 between that and what we're talking about here.

10:38 5 Q. I'm going to give you a box of markers and tell the jury
6 what you think the jury needs to know.

7 A. I got a blue one here that I'm going to use. All right.

8 Q. Hang on a second.

9 We've gotten in trouble for this before, so
10:38 10 you're going to need to use both hands. Try to speak into the
11 microphone.

12 A. All right. I'm going to try to be ambidextrous here today.

13 The first thing we're going to talk about is
14 memory. The memory, how do we have memories? Memories are
10:39 15 inputted by our five senses: what we see, what we hear, what we
16 taste, what we smell, what we touch produces a memory. We have
17 to actually see, hear, taste, smell, and touch so that the
18 memory can be implanted.

19 There's special areas of the brain that are
10:39 20 associated with memory. So, memory requires that the person is
21 conscious and awake and receives these type of memories, this
22 information. And that information then is implanted in the
23 brain as a memory.

24 Post-traumatic stress disorder -- I'm going to
10:40 25 give the first scenario. The true post-traumatic stress

1 disorder individual -- and we'll talk about a marine or a
2 military army fellow in Iraq when we first invaded Iraq in
3 Operation Iraqi Freedom. Mortars are being fired, bullets are
4 coming, bombs are being blown up, your Humvee is blown up; the
5 soldier, the marine, sees his buddies injured, he's hurt.
6 Those memories, the sights, the hearing, the sounds, the smell
7 are inputted, input into his memory.

8 Now, as Dr. Blank said in her deposition, that
9 can be so terrifying that psychologically some of those
10 memories are suppressed because they're so terrifying. Over
11 time and in therapy, in a safe place, some of those memories
12 can be restored. But the person was awake, conscious, and
13 aware of what was going on.

14 Here's Scenario Number 2 -- I need a little drink
15 of water.

16 All right. Scenario Number 2 -- I don't know if
17 anybody has had a colonoscopy or anything where they had Versed
18 under the anesthesia and woke up and had absolutely no memory.
19 Rohypnol and Versed are benzodiazepines. If you take enough of
20 those drugs, they cause anterograde memory. And it's not
21 memory loss. The memory was never implanted.

22 So, if a person says, "I was drugged with
23 Rohypnol and I remember absolutely nothing until I got up," no
24 memory of what happened between being unconscious can be
25 implanted. So, you can't have flashbacks. You can't have

10:43 1 nightmares because you have no memories implanted of what
2 happened.

3 My diagnosis is it's not possible to have
4 post-traumatic stress disorder from an alleged gang rape that
10:43 5 occurred sometime between the hours of 11:30 on July the 28th
6 of 2005, and 6:30 in the morning of July the 29th, 2005.

7 Q. I have a few follow-up questions, but I'm going to --

8 THE COURT: Yeah, that's fine.

9 BY MR. MCKINNEY:

10:44 10 Q. Ms. Jones has testified that it was her shock and horror,
11 coupled with her physical agony, which was the traumatic event
12 that -- and her realization that she had been, in her opinion,
13 raped that constitutes the actual experience of a life
14 threatening event. You understand that?

10:45 15 A. Well, I understand what you're saying. I see it as an
16 imagined.

17 Q. Is there any support in the medical literature, in the
18 psychiatric literature, for the notion that a person can wake
19 up from an event of amnesia and make assumptions that something
10:45 20 horrible has happened and be so traumatized by their
21 assumptions that they develop post-traumatic stress disorder?

22 A. They don't develop post-traumatic stress disorder because
23 they can't get through the threshold. They can have symptoms.
24 If they have in their imagination -- I mean, we develop serious
10:46 25 diseases because we imagine we have something. But it is not

1 post-traumatic stress disorder. It's an anxiety disorder of
2 some type or some -- put some other name on it, if you will.
3 It is not post-traumatic stress disorder. You can't have
4 flashbacks and you can't have -- flashbacks and -- I can't
5 remember the other -- sorry.

6 Q. That's all right. You mentioned that anyone who wants to
7 can punch in "PTSD" on the Google and come up with the symptoms
8 for post-traumatic stress disorder.

9 A. Yes. That's the problem with every forensic psychiatrist
10 that is -- has to deal with post-traumatic stress disorder.

11 Q. Let me visit with you on the specific topic of
12 hypervigilance. Tell our jury what hypervigilance is.

13 A. Hypervigilance in post-traumatic stress disorder -- and
14 we'll go back to the military person that experienced a
15 traumatic event. In fact, we have a famous case here in Texas
16 where a Vietnam veteran was at Hermann Hospital before it was
17 Hermann Memorial. They landed a helicopter on the heliport
18 next to his room. The guy went bananas, raced out. They tried
19 to grab him. They fell in to an elevator shaft. The intern
20 that was with him died.

21 Hypervigilance is you hear a noise and you're
22 startled because that noise might be an explosion going off or
23 something happening. So, you're hypervigilant, you're looking
24 at everything, you're worried, you keep the blinds down, you --
25 when you park your car, you park it in a special place so that

10:48 1 there's easy access in and out. When you go to the restaurant,
2 you make sure you sit with your back to the -- you sit with
3 your back so your front is to the door so you can see who's
4 coming in and who's not coming in. That's hypervigilance.

10:48 5 Q. Now, typically a person -- and hypervigilance is one of the
6 and may be the only observable manifestation of post-traumatic
7 stress disorder.

8 A. It's usually not the only symptom. They come in clusters.

9 Q. Is hypervigilance an observable condition in someone who is
10:49 10 undergoing a hypervigilance episode?

11 A. You have to rely on other individuals saying that, "I've
12 observed this hypervigilance."

13 Q. All right. Is a person who is actually afflicted with
14 hypervigilance, if that's the right way to put it, are they
10:49 15 typically aware that they are engaging in hypervigilant
16 activity or, to them, does it seem perfectly normal and
17 rational to be --

18 A. It depends. Many of them are aware that they're
19 hypervigilant, because they're seeing where they're going to
10:50 20 park the car, they're looking at where they're going to sit in
21 the restaurant. At home they understand, "I'm closing the
22 blinds. I'm blocking the door and making sure it's locked."

23 So, those type of hypervigilance, when you go
24 through it and you ask them, you have to elicit those symptoms.
10:50 25 And they may not -- they may not come out and tell it to you.

10:50 1 And, in fact, in evaluation of most people with
2 real post-traumatic stress disorder, you have to understand all
3 of the symptoms to be able to elicit them and then you have to
4 get corroboration that this actually is taking place.

10:50 5 Q. We may in a moment put up Bortz 191, but I'll try to do it
6 on asking you to assume certain things.

7 Assume that on August the 2nd of 2005, within a
8 day or two of returning to the United States from Iraq,
9 Ms. Jones went to see her regular OB-GYN, Dr. Terri Scott. You
10 may recall seeing that record.

11 A. I do.

12 Q. Assume that Ms. -- that Dr. Scott, in this courtroom, has
13 testified that Ms. Jones' demeanor throughout the visit -- and
14 also assume that this particular visit involved Ms. Jones
15 reporting to Dr. Scott that she had been raped by four men
16 Iraq.

17 A. Yes.

18 Q. Assume that Dr. Scott charted in her chart and then
19 testified in this courtroom that Ms. Jones was calm throughout
20 the visit, that Ms. Jones did not exhibit any observable signs
21 of hypervigilance. However, assume that Ms. Jones reported the
22 following symptoms of post-traumatic stress disorder on August
23 the 2nd, 2005.

24 MR. MCKINNEY: Let's put up 191 so I don't get it
25 wrong. But I'm pretty --

1 BY MR. McKINNEY:

2 Q. I know that she reported -- that Ms. Jones reported to her
3 doctor that she was hypervigilant.

4 MR. McKINNEY: And if we could get Bortz 191 up,
5 please?

6 THE COURT: Let's try to ask a question, please.
7 There's a lot of assumptions in here.

8 Okay. So, you're asking him to assume Ms. Jones
9 was calm throughout the visit to Dr. Scott, assume that
10 Ms. Jones did not exhibit any observable signs of
11 hypervigilance, and assume that Ms. Jones reported the
12 following symptoms of post-traumatic stress disorder?

13 MR. McKINNEY: I may need to go to the next page.

14 THE COURT: So, that's three different assumptions.
15 Is that right?

16 MR. McKINNEY: Yes.

17 THE COURT: Do you have that, Dr. Scarano?

18 THE WITNESS: Yes.

19 THE COURT: All right. As long as you have it.

20 THE WITNESS: Yes.

21 MR. McKINNEY: Yes, highlight this paragraph right
22 here, if you can, please, where it says "Patient reports."

23 No. The previous page.

24 Sorry. I found it. Right there.

25 BY MR. McKINNEY:

10:53 1 Q. See here, Doctor, where Dr. Scott charts that Ms. Jones
2 reported on August the 2nd that since the rape occurred she has
3 had difficulty sleeping and also is having flashbacks,
4 nightmares and hypervigilance.

10:54 5 A. I see that.

6 Q. You see that?

7 A. Yes.

8 Q. Are all of those the types of symptoms that one could find
9 easily on the Internet, as symptoms of post-traumatic stress
10 disorder?

11 A. Yeah, absolutely.

12 Q. Ms. Jones, as you know from the records, has described her
13 condition when she awoke as groggy, in pain, disoriented, trip
14 to the bathroom, et cetera.

10:54 15 A. Yes.

16 Q. Did you review the testimony of Pete Arroyo regarding
17 Ms. Jones' demeanor, her lack of -- apparent lack of pain,
18 limitation of movement, et cetera, as a part of reviewing the
19 records in this case?

10:55 20 A. Yes, I did.

21 Q. Did you review the two e-mail chains that Ms. Jones
22 participated in that morning, in which she was concerned about
23 being an object of gossip, concern that the girls hated her,
24 that she had made enemies, et cetera?

10:55 25 A. Yes.

10:55 1 Q. That she missed her family and was sick to her stomach,
2 et cetera?

3 A. Yes.

4 Q. Now, is it possible -- and when I say "possible," I mean
10:55 5 the reasonable realm of possibility, not in an infinite
6 universe of anything is possible.

7 But is it reasonably possible, is it conceivable,
8 et cetera, that a person such as Ms. Jones could experience an
9 event sufficiently horrific so as to induce post-traumatic
10:56 10 stress disorder at, let's say, 6:30 in the morning and then, by
11 6:45 in the morning, get in a car with someone like Pete Arroyo
12 and show absolutely no sign or symptom of having perceived that
13 horrific, life-changing event that apparently produced physical
14 pain as well as extreme emotional torment?

10:56 15 A. No.

16 Q. In your interview with Ms. Jones, did she supply to you new
17 information, regarding Charles Bortz and her thoughts regarding
18 Mr. Bortz that morning in her room, that you had not seen
19 before in any of the other records, in any of her prior
10:57 20 histories or reports to treating physicians or independent
21 medical examiners?

22 A. Yes.

23 Q. And what was the new information that Ms. Jones imparted to
24 you in your interview?

10:57 25 A. During the interview, we were talking about the events and

10:57 1 what happened and Ms. Jones told me that she was afraid to ask
2 Charles Bortz if he raped her because he [sic] felt that she
3 was -- he was trying to kill her and that if she did ask about
4 whether he raped, he may want to finish killing her.

10:57 5 That was nowhere in any record up until the time
6 that she came into my office.

7 Q. And when did she come into your office?

8 A. I believe it was March the 18th.

9 Q. Of which year?

10:58 10 A. 2011.

11 Q. Four months ago? About four months ago, Doctor?

12 A. Yes.

13 Q. Three or four months?

14 A. Almost. Almost four months.

10:58 15 Q. Finally, Doctor -- and then I'm just about through -- what
16 are some of the significant activities that Ms. Jones has
17 engaged in that -- and I'm asking this based on your report, of
18 course -- that you find to be inconsistent with someone who
19 continues to suffer from post-traumatic stress disorder?

10:58 20 A. Well, Ms. Jones applied and started school, the American
21 Public University System, the American Military University,
22 which is a subset of that; and she got her degree in forensic
23 sciences, graduated with a 3.56 or something like that, a
24 little over 3.5, and then went on to get her Master's of
10:59 25 Business Administration, graduated there with a 3.86, getting

10:59 1 mostly A's and B's. Somebody who has post-traumatic stress
2 disorder, who is complaining that they can't concentrate,
3 they're hypervigilant, they don't sleep, and they have all of
4 these problems don't get grades like that in undergraduate
11:00 5 school and graduate school.

6 Q. Is someone who is claiming post-traumatic stress disorder
7 as a result of, to use Ms. Jones' words, being drugged and
8 brutally raped in Iraq, is someone suffering from that
9 condition likely to wish to relive that experience by making
11:00 10 many public appearances, going on news programs, testifying
11 before Congress, et cetera, et cetera?

12 A. No. You find that people with post-traumatic stress
13 disorder are -- usually withdraw and don't go out a lot.

14 Ms. Jones has created a life and has gone to the
11:01 15 public media, "20/20," "The Rachel Maddow Show," the --
16 testified before Congress, helped with a bill, which I think
17 was great. The bill that Congress passed was probably good.
18 But people with serious, significant post-traumatic stress
19 disorder don't do that.

11:01 20 Q. Have you had an opportunity to review the actual testimony
21 and interviews that Ms. Jones has given; that is, have you seen
22 her speak and interact with interviewers and members of
23 Congress and the Senate?

24 A. Yes. I received some CD's which were videos of Ms. Jones
11:02 25 in the -- being interviewed by media and giving Congressional

11:02 1 testimony. She was very verbal, very present, spoke well, well
2 dressed with her makeup on and in very good style, giving her
3 testimony and her rendition of what happened.

4 Q. In the various public appearances that Ms. Jones has made
11:02 5 that you have observed as a part of your review of the evidence
6 in this case, was any part of her demeanor or affect, her
7 presentation, consistent with someone who was suffering from
8 the level of post-traumatic stress disorder that Ms. Jones
9 alleges in this case?

11:03 10 A. I didn't see any appearance of any significant stress or
11 distress or anxiety during her appearances.

12 MR. MCKINNEY: May it please the Court, I pass the
13 witness.

14 THE COURT: Okay. We're going to allow Mr. Hedges to
11:03 15 inquire on behalf of KBR, and then we'll give Ms. Jones'
16 attorneys as long as they might want.

17 MR. HEDGES: May I inquire, your Honor?

18 THE COURT: You may inquire, yes.

19 MR. HEDGES: Thank you.

11:03 20 **CROSS-EXAMINATION**

21 BY MR. HEDGES:

22 Q. Dr. Scarano, the only time you and I have said much more
23 than anything besides "Hi, how are you," is at your deposition.
24 Is that correct?

11:03 25 A. That is correct.

11:03 1 Q. I've never been to your office, have I?

2 A. No, you have not.

3 Q. And we have never spoken on the telephone, have we?

4 A. Never.

11:03 5 Q. I want to do a little housekeeping, Doctor. Let me ask you
6 to get out your report.

7 A. I got it.

8 Q. Would you turn to the index?

9 A. Okay.

11:04 10 Q. And it's Page 2 of the index, Section 8, Roman Numeral
11 VIII.

12 A. Yes.

13 Q. Do you see Line C?

14 A. Yes.

11:04 15 Q. I don't think you meant to say this but, in your answers to
16 Mr. McKinney, on several occasions you said that the alleged
17 assault occurred on July 28 and that the interviews and visit
18 to the doctor was on July 29th. Is that incorrect?

19 A. I was a day ahead of time. It was July 27th to July 28th.

11:04 20 Q. Thank you. Ms. Nelson also testified as to something else
21 that Mr. McKinney did not bring up with you; and that was she
22 thought that the, quote, imprisonment of Ms. Jones in the
23 container the next day was, if not standing alone by itself,
24 virtually that -- sufficient to cause the PTSD. Let me ask you
11:05 25 a couple of questions about that.

11:05 1 As a result of your voluminous -- your review of
2 the voluminous records, did you get the impression that
3 Ms. Jones had been imprisoned in a container with armed guards
4 standing outside?

11:05 5 A. My review of the records at the time that she was -- before
6 she was taken by the special agents of the State Department to
7 the embassy -- so, we're talking about the time that she went
8 from the hospital to HR to the hooch. From the time she
9 arrived at the hooch to the time she left with the special
11:06 10 agents, nothing in the reports that I read indicated that she
11 was ever incarcerated in any way.

12 Q. Based on what you read, the very same things you just
13 talked about, would any part of that, generally speaking, be
14 capable of inducing PTSD in a person?

11:06 15 A. Well, if it didn't happen, of course, it can't induce PTSD.
16 Somebody who has been imprisoned -- but more than just
17 imprisonment, there has to be -- see, you have to be in fear of
18 your life. So, it's not just the imprisonment.

19 However, the records I read, she was never
11:06 20 imprisoned. So, you can't have PTSD from that.

21 Q. Thank you.

22 Would you agree with me -- and I think you agreed
23 with Mr. McKinney -- that Ms. Jones has seen a remarkable,
24 unusual number of healthcare providers, both before she went to
11:07 25 Iraq and after she returned from Iraq?

11:07 1 A. Well, that's part of the somatization problem.

2 Q. And would you explain that to the jury, please?

3 A. Well, I think we went through it earlier. Somatization
4 disorder is an anxiety type of disorder where an individual,
11:07 5 due to certain stresses and problems in their life, can -- will
6 have physical manifestations of that: pain in their chest, pain
7 in their abdomen, pelvic pain, pain on intercourse, headaches
8 that are not -- that are not relieved by headache medication
9 and so forth.

11:07 10 Q. I think you very briefly mentioned but did not go into any
11 detail on the 2002 hospitalization when she was hospitalized
12 for four or five days and I think they were checking to see if
13 she perhaps had West Nile virus. Were there some things you
14 recall about that hospitalization that would speak to the
11:08 15 somatization disorder?

16 A. Yes. She never had West Nile virus and there -- what we
17 talked about as a pseudoneurological problem, where she wasn't
18 able to walk but several healthcare providers -- a nurse and an
19 occupational therapist -- when she didn't believe that she was
11:08 20 being observed, was able to walk fine. That's a type of
21 pseudoneurological problem, but it is also a hysterical type of
22 reaction to problems that are going on in her life at that
23 time.

24 Q. And I think Mr. McKinney and you discussed the fact that,
11:09 25 since returning from Iraq, she's seen a large number of

11:09 1 healthcare providers, most of whom have either diagnosed or
2 simply sort of accepted as a diagnosis of her that she has
3 PTSD, which obviously you disagree with them.

4 What have you done, that they did not do, that
11:09 5 accounts for your disagreeing with so many healthcare
6 providers?

7 A. They were treating healthcare providers, therapists,
8 psychiatrists, who, as we talked earlier, accept what the
9 individual tells them because they're not into not believing
11:09 10 what the patient says when they come into the office. The
11 patient is coming in, "I'm suffering. I need help."

12 "What is your problem?"

13 "I was terribly and awfully raped by five firemen
14 in Iraq and physically abused and so forth."

11:10 15 They're not going to go looking at five banker's
16 boxes full. But that's treating doctors. That's not a
17 forensic psychiatrist. I have a different ethical duty than
18 they do.

19 Q. All the rest of my questions are going to pertain to
11:10 20 another, I guess, forensic psychiatrist who did interview
21 Ms. Jones; and that's Dr. Blank. Do you recall Dr. Blank's
22 interview?

23 A. I recall that. I didn't know she was a forensic
24 psychiatrist.

11:10 25 Q. What causes you to have some doubt about that?

11:10 1 A. Well, I didn't see her credentials that she's Board
2 certified in forensic psychiatry.

3 THE COURT: You thought she was a treating physician,
4 right?

11:10 5 THE WITNESS: Yes. Well, I thought she was a treating
6 physician. Her report was like a treating physician, and she
7 was an expert for the defense.

8 THE COURT: That's what I thought, too; but maybe I'm
9 wrong.

11:10 10 BY MR. HEDGES:

11 Q. Let me just kind of walk through some aspects of her
12 report, Doctor. You mentioned to Mr. McKinney that you
13 reviewed a number of depositions taken in this case. Do you
14 remember roughly how many?

11:11 15 Don't take time to look it up if you don't. Just
16 give us an estimate.

17 A. I'm going to give an estimate of 20, 30 depositions.

18 Q. Let me kind of walk you through a timeline the morning of
19 the 28th. Did you review -- starting early in the morning and
11:11 20 moving on from there, did you review the deposition of

21 Mr. Bortz?

22 A. Yes.

23 Q. Mr. Arroyo?

24 A. Yes.

11:11 25 Q. Anthony Adams?

11:11 1 A. Yes.

2 Q. Kristen Rumba?

3 A. Yes.

4 Q. Jodi Schulz?

11:11 5 A. Yes.

6 Q. Jamie Armstrong?

7 A. Yes.

8 Q. Were those useful to you?

9 A. Yes, they were very useful.

11:11 10 Q. Why?

11 A. Well, because they provided other views or other
12 recollections of the events that occurred during that period of
13 time.

14 Q. Was one of the most significant the -- both the report of
11:12 15 and the deposition of Dr. Schulz?

16 A. Absolutely.

17 Q. From reviewing Dr. Blank's report, did Dr. Blank review any
18 of these depositions?

19 A. I didn't see in what she wrote as what she reviewed that
11:12 20 she reviewed any of them.

21 Q. We asked her here in court, and she said she did not.

22 What would be a problem with her holding herself
23 out as a forensic psychiatrist, or at least holding herself out
24 as an expert witness who is able to opine on the condition of
11:12 25 Ms. Jones, if she failed to read Dr. Schulz' report?

11:12 1 A. That's a -- this is a significant problem that occurs not
2 infrequently. A treating psychiatrist gets up and accepts what
3 the individual tells them and then gives testimony as to their
4 opinion. The ethical guidelines for the American Association
11:13 5 of Psychiatry and the Law, which is the United States forensic
6 psychiatry group, admonish and say that if you're a treating
7 psychiatrist don't go in and testify as a forensic
8 psychiatrist, because most of the time you have a -- I mean, if
9 you have a doctor-patient relationship, of course, you have a
11:13 10 fiduciary responsibility to the patient. So -- and you would
11 have accepted the patient's word.

12 In addition, you're very vulnerable to
13 cross-examination.

14 THE COURT: So, you would say that a treating
11:13 15 psychiatrist would be inhibited as to what she could disclose
16 in a court of law?

17 THE WITNESS: Yes. Because he has a duty not to harm
18 her patient. [sic]

19 BY MR. HEDGES:

11:14 20 Q. And there's a privilege that exists between a treating
21 physician and their patient, is there not?

22 A. There is. And what happens is, if the patient asks the
23 treating doctor to come and testify, the relationship is
24 essentially destroyed, because now the patient wants to make
11:14 25 sure that the doctor is going to testify in accordance to help

11:14 1 them rather than to be objective as to the evaluation.

2 Q. And, Doctor, is it fair to say that your uncertainty as to
3 whether Dr. Blank was a forensic psychiatrist or a treating
4 psychiatrist in this is based on her lack of review of all of
11:14 5 the information that was available to be reviewed, such as
6 prior pre-Iraq medical records and all of this deposition
7 testimony?

8 A. Yes. This was not a forensic psychiatric report.

9 Q. Just wasn't one at all?

11:15 10 A. No.

11 Q. One of my sharp young lawyers has handed me a note that at
12 one time you referred to Dr. Blank as a defense expert. She
13 is, of course, the plaintiffs' expert?

14 A. Oh, I'm sorry. I misspoke. You see, I do a lot of
11:15 15 criminal stuff and I --

16 Q. I understand.

17 I believe I asked her if she had reviewed the
18 e-mail chain between Pete Arroyo and Ms. Jones that morning of
19 the 28th and she had not. Would you tell the jury why a
11:15 20 forensic psychiatrist, if -- if a forensic psychiatrist would
21 want to review that e-mail chain and, if so, why?

22 A. Right. There -- a forensic psychiatrist wants to review
23 writing, letters to friends or to parents, because they're not
24 as cautioned about what they say. Here are 19 e-mail back and
11:16 25 forth. I think nine from Pete Arroyo and ten from Ms. Jones.

11:16 1 And it helps to understand where her state of mind is during
2 that period of time before she gets Mr. Arroyo to come because
3 she wants to tell him something.

11:16 4 Q. And would a forensic psychiatrist find that chain of
5 e-mails critical to review?

6 A. I have to explain that a forensic psychiatry looks at
7 thousands of pieces of information. No one piece of
8 information is going to make or break what the final opinion
9 is. It's the accumulation of all of that information that the
11:17 10 forensic psychiatrist depends upon.

11 That e-mail interactions between Ms. Jones and
12 Mr. Arroyo are helpful to see as part of the thousands of
13 pieces of information that have to be reviewed.

14 Q. I want to go through a few of the things that Ms. Jones
11:17 15 told Dr. Blank and get your reaction to them. She told
16 Dr. Blank that armed Gurkhas took her to a location where she
17 was locked inside a shipping container.

18 Based on your review of the depositions of the
19 people who were actually there and saw and heard what happened,
11:17 20 was Ms. Jones taken to a location by armed Gurkhas?

21 A. No.

22 Q. Was she locked in a shipping container?

23 A. No.

24 Q. If Ms. Jones told that to Dr. Blank, was she
11:18 25 misrepresenting what had happened?

11:18 1 A. She was and --

2 MR. ESTEFAN: Your Honor, there's a lot of leading
3 questions --

4 A. -- Dr. Blank accepted it.

11:18 5 MR. ESTEFAN: There's a lot of leading questions going
6 on. I have to object. He's serially leading the witness.

7 THE COURT: He's asking -- what I heard was asking,
8 yes or no, did something occur. That's not leading. I'll
9 allow it.

11:18 10 MR. KELLY: And he's also violating the order about
11 one of the ultimate issues.

12 THE COURT: I'm going to allow it.

13 BY MR. HEDGES:

14 Q. In the same paragraph, Ms. Jones tells Dr. Blank, quote

11:18 15 "She was there" -- the shipping container -- "for some period
16 of time until she was able to beg a guard to let her use his
17 cell phone."

18 Based on your review of the records, is that an
19 accurate depiction of what happened?

11:18 20 A. No.

21 Q. On Page 9 of Dr. Blank's report, it says, quote, "She
22 reports that her pain after the assault was ten out of ten."
23 Is that the highest pain level there is?

24 A. Yes.

11:19 25 Q. Did Ms. Jones tell Dr. Schulz anything about pain in her

11:19

1 breasts?

2 A. No.

3 Q. Also on the same page of Dr. Blank's report is a list of
4 medical issues. Did Ms. Jones tell Dr. Blank about her

11:19

5 pre-Iraq anxiety and depression?

6 A. Not that I recall reading her report.

7 Q. There's a section on Pages 13 and 14 of Dr. Blank's report,
8 entitled "Current living environment, support network." Do you
9 recall seeing anything in that section -- I will represent to

11:19

10 you that she saw Dr. Blank in 2010, I believe. It might have
11 been 2009. Is there anything in that report about her
12 2007 altercation with her husband at the San Diego bowling
13 alley?

14 A. No.

11:20

15 Q. And do you find the bowling alley episode to be
16 significant?

17 A. The bowling alley incident is extremely significant --

18 Q. Why is that?

19 A. -- in several ways.

11:20

20 Q. Would you please explain that to the jury?

21 A. Yes.

22 Q. I know you've talked about some of it. I don't mean to ask
23 you to repeat anything that you've already told them.24 A. Right. It's significant because she accuses her husband of
11:20 25 abusing her, hitting her. She first says that, "I told him I

1 was pregnant, and he started hitting me."

2 "I told him that I was thinking about getting
3 pregnant, and he started hitting me."

4 "I was beating him at bowling, and he hit me."

5 And then, in her deposition, "I was beating him
6 playing pool, and he started hitting me."

7 The husband's taken to the -- I don't think he
8 was ever officially arrested, but he was taken to the police
9 department as the investigation went on.

10 A military protective order was instituted. She
11 told the social worker, "I'm scared. I didn't realize he was
12 this violent."

13 And then, a day or two later, she calls the
14 investigator to say, "I didn't -- that's not the truth. I was
15 so drunk I couldn't -- I don't remember what I did."

16 And then, when she talked to me in my evaluation,
17 she again said that -- now it's back to, "He hit me."

18 There's just no -- there's no consistency in what
19 she says. And to impute her own husband in a way that caused
20 him to get into trouble and if it would have been, you know,
21 followed up, he might have been court-martialed -- we don't
22 know what could happen to him.

23 Q. Are inconsistencies such as you have just described to the
24 jury consistent with one or more of your diagnoses?

25 A. Yes.

11:23 1 Q. And which would that be?

2 A. Well, first, malingered the post-traumatic stress disorder
3 and narcissistic, histrionic, hysterical personality disorder.

4 Q. From reading the interviews that were done by the law
11:23 5 enforcement personnel and the medical personnel in San Diego,
6 is it -- would you describe her behavior during those
7 interviews as hysterical?

8 A. No.

9 Q. Would you describe it as inconsistent?

11:23 10 A. Yes.

11 Q. Let me go back to Dr. Blank's report for a minute. You may
12 recall that she has a "Family History" section and that it's
13 about two relatively short paragraphs long. You have four
14 pages of family history.

11:23 15 Would you tell the jury why, in a forensic
16 assessment of a person, family history is important?

17 A. Family history is an extremely important area to inquire
18 about because you want to know what -- the person's childhood
19 and background, what they were doing as children, what the
11:24 20 family environment is like, how things went in school, whether
21 they had animals, how did they react with the animals.
22 Especially in a criminal area, people that abuse animals are
23 more likely than not to abuse fellow human beings.

24 So, you want to go through all of that to
11:24 25 understand the type of background that this individual came

11:24 1 from. And it's especially helpful to people with personality
2 disorders, because they start in childhood. You don't develop
3 a narcissistic personality disorder when you become 21. This
4 stuff starts in a childhood, during the person's childhood.

11:25 5 Q. I questioned Dr. Blank about how short her family history
6 was, and I believe her answer basically was it's just not that
7 important to her because she's more concerned about what the
8 condition of the client -- was her word -- is now. Is that
9 more consistent with a treating physician or a forensic

11:25 10 physician?

11 A. Absolutely. The treating physician wants to know, "What is
12 your problem? What are the symptoms you're having?"

13 "Oh, you've got -- you were terribly raped and
14 abused and you have hypervigilance and you have flashbacks and
11:25 15 so forth. Well, you got post-traumatic stress disorder. We
16 got to get you a treatment."

17 Q. Final group of questions, Doctor. You and Mr. McKinney
18 went through in some degree of detail -- and I won't reiterate
19 it -- 12 or 14 tests that you conducted during your interview
11:26 20 of Ms. Jones. Do you recall that?

21 A. Yes.

22 Q. Do you recall from Dr. Blank's report whether she conducted
23 any such tests?

24 A. No. But, you know, everybody may be a little different
11:26 25 than -- the forensic psychiatrist is in a different area. I

11:26 1 come into this court and Mr. Kelly is going to cross-examine
2 me. I've got to have my stuff together. I've got to know what
3 I am talking about, because he's going to test that I know what
4 I am saying.

11:26 5 Q. Are the tests that you conducted basically -- I realize
6 different doctors will do different tests, but are those fairly
7 standard tests for a forensic assessment?

8 A. Yes.

11:26 9 Q. Is it surprising not to see any of them in Dr. Blank's
10 report?

11 A. It's surprising because if the forensic psychiatrist
12 doesn't do the testing himself will send the individual to a
13 neuropsychiatrist and have neuropsychiatric testing done. It's
14 almost always that they will have some type of way to identify
11:27 15 the person's cognitive abilities.

16 Q. And did Dr. Blank refer Ms. Jones out for such testing by
17 another professional?

18 A. I didn't see it.

19 MR. HEDGES: Your Honor, I pass the witness.

11:27 20 THE COURT: Mr. Kelly -- yes, sir, your inquiry,
21 Mr. Estefan.

22 MR. ESTEFAN: Thank you, Judge.

23 **CROSS-EXAMINATION**

24 BY MR. ESTEFAN:

11:27 25 Q. Good morning, Dr. Scarano.

11:27 1 A. Good morning.

2 Q. "Independent" is not really accurate, is it?

3 A. I think so.

4 Q. Well, the reason it's not is because you, like all of us,
11:28 5 have life experiences that affect your views. Isn't that true?

6 A. Oh, sure, of course.

7 Q. Right. And like we all do, you filter information through
8 the lens of your life experiences, right?

9 A. It's almost impossible not to.

11:28 10 Q. Absolutely. For example, you're both a doctor and a
11 lawyer?

12 A. That's correct.

13 Q. Another example of how your views are affected is your
14 admiration and respect for a teacher you had when you were
11:28 15 studying your current field, forensic psychiatry. Isn't that
16 so?

17 A. Dr. Felthous?

18 Q. Yes.

19 A. Oh, yes.

11:28 20 Q. You remember Dr. Felthous and his -- you admire him and his
21 work, right?

22 A. I sure do. He was my -- I was -- he ran the program in
23 which I did my forensic psychiatry fellowship.

24 Q. Yes, sir. You met him in 1996?

11:28 25 A. Yes.

11:28 1 Q. And, of course, you know that Dr. Felthous worked hard to
2 understand and empathize with the accused person in criminal
3 matters, right?

4 A. I'm not sure what you mean by that. He wanted to do an
11:29 5 objective, proper evaluation and not railroad a defendant.

6 Q. Yes.

7 MR. ESTEFAN: May I have the Elmo, please?

8 BY MR. ESTEFAN:

9 Q. In fact, you wrote, "Dr. Felthous is a wonderful human
11:29 10 being who exemplifies all those qualities we find so meaningful
11 and worthwhile."

12 Didn't you write that?

13 A. Was that when he became president of the AAPL, the American
14 Association of Psychiatry and the Law, and I was his presenter?

11:30 15 Q. Well, this is your -- this is something that you wrote for
16 the *Journal of American Academy of Psychiatry Law* --

17 A. Yes.

18 Q. -- in 2007.

19 A. That was the presentation of Dr. Felthous, who was taking
11:30 20 over as president of the American Association of Psychiatry and
21 the Law.

22 Q. Right. And, so, whatever you wrote here is -- these are
23 your words?

24 A. They're my words.

11:30 25 Q. And they're all true?

11:30 1 A. Of course, they're true.

2 Q. Okay. Of course.

3 And, so, back to my question. In fact, you did
4 write, "Dr. Felthous is a wonderful human being who exemplifies
11:30 5 all those qualities we find so meaningful and worthwhile,"
6 didn't you?

7 A. I did write that.

8 Q. And you want to be like that, too, right?

9 A. I don't want to be Dr. Felthous. I want to be Dr. Scarano.

11:31 10 Q. And, in fact, you are. But I'm saying you want to be like
11 Dr. Felthous --

12 A. No, I don't want to be like him.

13 Q. Okay.

14 A. I want to be in a -- a first-class ethical forensic
11:31 15 psychiatrist. That's what I want to be.

16 Q. Okay. Well, what I -- my question was, Doctor, is you
17 don't want to exemplify the qualities we find so meaningful and
18 worthwhile, like Dr. Felthous?

19 A. You're reading one sentence.

11:31 20 Q. Yes, sir.

21 A. I don't know what that means unless I can hear the rest of
22 what I said. What are those qualities that I -- I must have
23 mentioned them.

24 Q. Well, you certainly did mention them.

11:31 25 A. Okay.

11:31 1 MR. HEDGES: Your Honor, I'm not sure this is
2 something that we've seen before.

3 MR. ESTEFAN: No, they haven't; but this is
4 cross-examination.

11:31 5 THE COURT: Let's not put it on the screen until
6 you've authenticated it somehow through the witness.

7 MR. ESTEFAN: Certainly. He's identified it as an
8 article he's written, your Honor. So, I'll be happy to share
9 it with counsel.

11:32 10 THE COURT: Well, I don't know what part of the
11 article we're talking about.

12 MR. ESTEFAN: We're going to talk about all of it,
13 Judge.

14 THE COURT: Let's give him the whole article, then, if
11:32 15 it's --

16 MR. HEDGES: We have no objection to it, your Honor.

17 THE COURT: All right.

18 BY MR. ESTEFAN:

19 Q. So, again, Dr. Scarano, here where my finger is --

11:32 20 A. Okay.

21 Q. -- it says he's -- Dr. Felthous is -- and I guess I have to
22 make that a little smaller.

23 It starts over here, "Dr. Felthous is a wonderful
24 human being who exemplifies all those qualities we find so
11:32 25 meaningful and worthwhile." You wrote that?

11:32 1 A. Yeah, I did.

2 Q. Okay.

3 A. I'm introducing him as the new president.

4 Q. I understand. Well, you wouldn't lie about that, would
11:33 5 you?

6 A. Of course not. I love Dr. Felthous. He's wonderful.

7 Q. Sure. You also wrote this about Dr. Felthous, "No matter
8 how loathsome, contemptible, or wicked a criminal defendant
9 might be, Dr. Felthous also sees the human being behind the
11:33 10 behavior, the labels, and the alleged crime."

11 A. Absolutely. He taught me that.

12 Q. And, again, you wrote that about Dr. Felthous because you
13 admire that about him. True?

14 A. I do admire him.

11:33 15 Q. You would agree that Dr. Felthous focused on helping others
16 understand the psychiatric problem and how it related to the
17 criminal act, wouldn't you?

18 A. Yes, just like I do.

19 Q. All right. You learned that Dr. Felthous always knew the
11:33 20 parameters within which he could testify and nobody could move
21 him out of those parameters, right?

22 A. That's correct, yes.

23 Q. And you try to be like Dr. Felthous in your practice of
24 forensic psychology, and you follow his core principles. Isn't
11:34 25 that true?

11:34 1 A. That's forensic psychiatry.

2 Q. You follow his core principles?

3 A. I don't know what you mean by "his core principles." This
4 is the principles of the American psychiatric -- the American
11:34 5 Association of Psychiatry and the Law.

6 Q. Yes, sir.

7 A. It's to do objective evaluations, honest evaluations while
8 striving for objectivity. Of course, that's what we all do,
9 hopefully.

11:34 10 Q. Well, the -- those parameters don't -- they don't talk --
11 or those guidelines don't talk about knowing the parameters
12 within which you could testify and not allowing yourself to be
13 moved out of those no matter what. That's not in there
14 anywhere?

11:34 15 A. In where?

16 Q. In the American Psychiatry --

17 A. Well, of course, it is. All forensic psychiatrists do
18 that. If you are going to do an evaluation, you know the
19 parameters. In other words, I'm going into a jail, I know that
11:35 20 I have to alert the individual that this evaluation is not a
21 doctor-patient relationship, that his attorney didn't hire me
22 or he did hire me, that what you say is not confidential.
23 These are all the parameters. We did that with Ms. Jones.

24 Q. I think we're talking about apples and oranges, Doctor.

11:35 25 I'm not talking about the parameters of a jail visit to do an

11:35 1 evaluation. I'm talking about the parameters of your
2 testimony.

3 A. I don't think you understand what you're asking me, Mr. --
4 Esquivel, is it?

11:35 5 Q. It's close.

6 THE COURT: "Estefan."

7 A. Estefan.

8 THE COURT: Let's approach.

9 *(At sidebar with all counsel)*

11:35 10 THE COURT: I'm not sure where this is going. I mean,
11 is there some reason you think he's violated the ethical
12 standards of forensic psychiatry?

13 MR. ESTEFAN: It goes right to his bias, Judge, and
14 who he's aligning himself with in this case. And he is
11:36 15 aligning himself with Charles Bortz because Bortz is the
16 accused in this matter. Although it's not a criminal matter,
17 he is squarely the accused here. And, so, he has a direct
18 bias, as shown by his writings and his testimony, against one
19 who has -- anyone other than the accused.

11:36 20 MR. McKINNEY: Well, here's the problem. The
21 immediate problem we have here is that Mr. Estefan is couching
22 the questions in terms of paraphrasing the "parameters of
23 testimony." The doctor understands the parameters to be what
24 are the rules of the road.

11:36 25 THE COURT: Yeah.

11:36 1 MR. MCKINNEY: And it's Mr. Estefan's, I think,
2 implied meaning once that you get your opinion you're not going
3 to move off of it. And that's how Mr. Estefan -- that's the
4 spin Mr. Estefan is putting on the parameters of Dr. Scarano's
11:37 5 views on how he conducts his business.

6 And, so, really what we have here is we have a --
7 it's not uncommon -- a lawyer and a witness arguing over an
8 undefined term. If Mr. Estefan will define what he means by
9 "parameters of testimony," they'll be singing off the same
11:37 10 page; but right now they're bickering back and forth over
11 fundamental meanings.

12 THE COURT: At a deeper level than that, though, I'm
13 concerned that to suggest that somebody who's done forensic
14 psychiatry for an accused is, therefore, biased in favor of the
11:37 15 accused looks like a huge leap to me. I mean, that's like
16 saying a lawyer who represents a criminal defendant is biased
17 against victims in criminal law. I don't think that follows.

18 MR. ESTEFAN: Judge, I'm allowed to show the bias of
19 the witness; and this goes to his bias. He picked these words.
11:37 20 He wrote them, he admires this guy, he wants to be like him.

21 THE COURT: So what?

22 MR. ESTEFAN: So, it shows his bias. That's it.

23 THE COURT: It doesn't show bias.

24 MR. ESTEFAN: Well, I think the jury can decide that,
11:38 25 Judge.

11:38 1 MR. HEDGES: Your Honor, I think he probably testified
2 a lot more times on behalf of the State than he's testified on
3 behalf of the --

4 MR. ESTEFAN: You can bring that up.

11:38 5 MR. KELLY: It's subject to cross-examination.

6 Judge, they were allowed to go into things that
7 went beyond this Court's order. They asked him about the
8 actual truth of certain issues, which the Court admonished
9 about. Mr. Estefan should certainly be allowed --

11:38 10 THE COURT: No. What I admonished -- my admonition
11 was not to ask the ultimate question of whether Ms. Jones was
12 lying or not. That's --

13 MR. KELLY: And they did that, Judge.

14 MR. ESTEFAN: They were right on it.

11:38 15 MR. KELLY: They did exactly that.

16 MR. MCKINNEY: We were allowed to ask about whether
17 there were inconsistencies, and he did not pass on her
18 credibility. He simply identified --

19 MR. KELLY: Mr. Hedges went to the direct issue.

11:38 20 MR. ESTEFAN: Yes, he did.

21 MR. KELLY: Yes, he did.

22 THE COURT: What question?

23 MR. KELLY: Well, I have to go back read the
24 transcript; but Mr. Hedges' direct -- I objected, your Honor --

11:38 25 THE COURT: The first thing we need to do is clarify

11:38 1 what you mean by "parameters." What he's testifying about is
2 the absolute common sense distinction between a treating
3 psychiatrist and a forensic psychiatrist. That's what he
4 understands the question to be.

11:39 5 Okay. I'll give you a little room.

6 *(In open court)*

7 BY MR. ESTEFAN:

8 Q. Dr. Scarano, we had a little difficulty with a word -- the
9 word was "parameters" -- in referencing that Dr. Felthous
10 always knew the parameters within which he could testify and
11 nobody could move him out of those parameters.

12 MR. ESTEFAN: Judge, is the microphone back on?

13 THE COURT: It is now.

14 MR. ESTEFAN: I think she just turned it back on.

11:40 15 THE COURT: It is now.

16 BY MR. ESTEFAN:

17 Q. Did you hear my question, Dr. Scarano, or the preface to
18 it?

19 A. I heard you say something. I didn't hear the question
11:40 20 part.

21 Q. All right. I'm getting to that. We were stuck on the
22 statement that -- or the question that you learned that
23 Dr. Felthous always knew the parameters within which he could
24 testify and nobody could move him out of those parameters.

11:40 25 A. That's correct.

11:40 1 Q. All right. And you agree with that, right?

2 A. I said you don't understand what the parameters are.

3 Q. Well, I'm just taking it right out of your paper that you
4 wrote. Right here at the top, said, "He always knew the
11:40 5 parameters within which he could testify and nobody could move
6 him out of those parameters."

7 A. Yes. Would you like me to tell you what the parameters
8 are?

9 Q. I just want an answer to the question. Is it yes or no?

11:40 10 THE COURT: He said, "Yes."

11 Dr. Scarano, the answer I see on the screen is,
12 "Yes. Would you like me to tell you what the parameters are?"

13 THE WITNESS: Yes. Right.

14 THE COURT: He said, "Yes."

11:41 15 BY MR. ESTEFAN:

16 Q. Dr. Scarano, now I want to take a step back.

17 A. Okay.

18 Q. Now, I'm not blaming you for your bias --

19 A. I'm not biased.

11:41 20 THE COURT: Whoa, whoa, whoa.

21 A. I'm not biased.

22 THE COURT: Rephrase that question, please.

23 BY MR. ESTEFAN:

24 Q. I'm trying to understand the basis of your opinions.

11:41 25 A. It's 243 pages.

11:41 1 Q. I understand that.

2 You know that every mental health professional
3 who treated Jamie found that she has PTSD from the sexual
4 assault in Iraq?

11:41 5 A. I understand that. Absolutely.

6 Q. And these other professionals have been saying this for six
7 years?

8 A. And they've been wrong for six years.

9 Q. You're the only one who says she doesn't have PTSD on
11:41 10 initial diagnosis. Isn't that right?

11 A. That's correct.

12 Q. And, so, that would make you an outlier. Isn't that right,
13 Doctor?

14 A. No, it would not. It makes me the only one that is able to
11:42 15 evaluate it correctly.

16 Q. You say that Jamie doesn't have PTSD from the rape because,
17 after she took two sips from a drink, she can't remember
18 anything until the next morning?

19 A. Well, now you're adding things in there. You're saying
11:42 20 "the rape." Who knows? If you want to say "alleged rape,"
21 I'll answer the question.

22 Q. You say, "Jamie does not have PTSD from the sexual assault
23 because, after she took two sips from a drink, she can't
24 remember anything until the next morning."

11:42 25 A. All I'm saying is that she has testified she can remember

11:42 1 nothing, meaning that no memory was implanted. So, she can't
2 have a memory. She can't get into post-traumatic stress
3 disorder through the door.

4 Q. Well, aren't you taking inconsistent positions about her
11:42 5 level of consciousness that night, Doctor?

6 A. Well, explain to me.

7 Q. Well, earlier -- just within the last hour you said you
8 didn't believe she was unconscious because she came up with
9 this, "Uh-oh, I have, you know, regret after the fact," and,
11:43 10 so, she had to concoct this story. You took that position?

11 A. Yes.

12 Q. And then, at the same time, when talking about her PTSD,
13 you said, "But she couldn't have it because she was
14 unconscious."

11:43 15 So, you've taken absolutely diametrically opposed
16 positions with --

17 A. Oh, no.

18 Q. -- regard -- wait a minute. Please let me finish my
19 question -- with regard to the level of her consciousness, have
11:43 20 you not?

21 A. I took her position in my understanding of the facts.

22 Q. You took two different positions in a completely
23 opposite --

24 A. I didn't take two different positions. I provided you with
11:43 25 two potential things, her story and what really happened.

1 Q. Well, she can't be both conscious and unconscious at the
2 same time.

3 A. Exactly right.

4 Q. So --

5 A. Exactly right.

6 Q. And you've said she was conscious and then afterwards
7 regretted it and came up with this story because Mr. Bortz'
8 girlfriend was going to come back. You said that right here in
9 this court just minutes ago.

10 A. I said it because she had two sexually transmitted diseases
11 that she didn't tell him about.

12 Q. I'm not asking for the reason. I'm just asking if you said
13 it.

14 A. Said what?

15 Q. That she was conscious and then afterwards regretted it
16 because Mr. Bortz' girlfriend was going to come back and she
17 had to come up with a story. You said that, didn't you?

18 A. I don't remember that Mr. Bortz' girlfriend was coming
19 back. I remember she was coming back. But my point was she
20 said it because she was in a predicament because she didn't
21 tell Mr. Bortz about her sexually transmitted diseases.

22 Q. Right. But, so, she would have had to have been conscious?

23 A. Of course.

24 Q. And then you turn around, within minutes of that, and said
25 she can't have PTSD because she wasn't conscious.

11:45 1 A. But I'm using her testimony.

2 Q. Well, which testimony are you using?

3 A. I'm using her testimony. She said, "I took two sips and
4 I'm unconscious and I don't know anything."

11:45 5 If that's true --

6 Q. Okay.

7 A. -- then she cannot have memories of what happened. I
8 don't -- what you're saying is -- the other part of it is I
9 don't believe the story.

11:45 10 Q. So, again, back to your personal bias --

11 A. I don't have a personal bias.

12 Q. You are filtering things as you see fit.

13 A. Well, yes, like all human beings, I have -- I have
14 experiences in life that are part of who I am.

11:45 15 Q. Right. Using your criteria then, Doctor, when a woman who
16 is drugged, raped, and finds out about it the next morning, she
17 can -- just simply cannot have PTSD, right, using your
18 criteria?

19 A. Yeah, there's no -- if there is no memory. She can
11:46 20 certainly have psychiatric disorder due to that, if it was
21 true.

22 Q. So, if she doesn't have PTSD, what is the diagnosis of a
23 woman who's been through that?

24 A. She can have general anxiety disorder, depression, you
11:46 25 know, things of that type.

11:46 1 Q. You do know, Doctor, that a student of yours, who has been
2 one of Jamie's treaters, has found that Jamie suffers from
3 PTSD?

4 A. What student is that of mine?

11:46 5 Q. James Paskowitz.

6 A. I don't know James.

7 Q. He's one of Jamie's doctors in this case.

8 A. Well, I know that. But I don't know that he was my
9 student.

11:46 10 THE COURT: Do you have a basis for saying that?

11 MR. ESTEFAN: I do.

12 THE COURT: Okay.

13 BY MR. ESTEFAN:

14 Q. Are you open to the possibility, Doctor, that you have a
11:46 15 bias in favor of the accused and that's at the core of your
16 opinions that Jamie does not have PTSD?

17 A. Absolutely not.

18 Q. You're not even open to that possibility?

19 A. No. I don't know anything about KBR and Halliburton and
11:47 20 Mr. Bortz. I knew nothing about this case until I was
21 contacted.

22 THE COURT: Dr. Scarano, do you testify in criminal
23 matters on behalf of the government sometimes?

24 THE WITNESS: Yes.

11:47 25 THE COURT: Often?

1 THE WITNESS: Yes, fairly often.

2 THE COURT: Okay.

3 BY MR. ESTEFAN:

4 Q. You know, that brings up a point.

5 MR. ESTEFAN: Thank you, Judge.

6 BY MR. ESTEFAN:

7 Q. You mentioned earlier -- you gave an example about a
8 criminal who has murdered somebody and you need to do a
9 face-to-face interview to get the person's mindset. Do you
10 remember saying that?

11 A. To give an understanding of his -- what his -- what was
12 going -- what his state of mind was at the time of the alleged
13 offense.

14 Q. Right. You know as a lawyer, of course, as well as a
15 forensic psychiatrist, that "murder" is a legal term. And that
16 just means somebody killed somebody, but it's for the jury to
17 determine whether that was murder or whether it was not. You
18 understand that distinction, don't you?

19 A. Yes, sure. Just like "insanity" is not a psychiatric
20 diagnosis.

21 Q. You talked about Jamie's story "evolving," I think was the
22 term you used. Now, that's because, as the effects of the drug
23 are wearing off, little bits and pieces of information are
24 coming into her consciousness. That's accurate, isn't it?

25 A. No. Because, in my opinion, she was never drugged.

11:48 1 Q. Now, you talk about -- you gave an example of a
2 colonoscopy, and I believe it was under PTSD Number 2 on the
3 screen there, on the chart.

4 A. I think it was under "Memory." I said benzodiazepines like
11:48 5 Versed and Rohypnol cause anterograde memory loss.

6 Q. Right.

7 A. And that loss -- it's not lost. It was never implanted,
8 the memory.

9 Q. Yes. And if a person -- a patient is under anesthetic with
11:49 10 Versed, another anesthetic -- you certainly heard of patients
11 waking up during surgery?

12 A. Yeah. But, you see, they woke up --

13 Q. Right.

14 A. -- and now they're awake and conscious and, of course, now
11:49 15 they have a memory.

16 Q. And you certainly heard of patients who have a memory, even
17 those who didn't wake up, of things that happened in the
18 surgical suite? You've heard of that?

19 A. No.

11:49 20 Q. Never heard of that?

21 A. There is no memory if you didn't come into a conscious
22 level.

23 Q. Now, you also talked about something to the effect of Jamie
24 going to Congress and on TV and all that other. Do you know
11:49 25 why she did that?

11:49 1 A. Yes.

2 Q. And it's because KBR was forcing her to go to arbitration
3 and not into a courtroom like this. Isn't that --

4 A. No, that wasn't my understanding. My understanding was
11:49 5 that she was trying to have the government do something -- oh,
6 right, to create a law that they wouldn't have to go to
7 arbitration, you're right.

8 Q. Yes.

9 A. Yes. So, she did all that, yes. I'm not saying anything
11:50 10 bad about that.

11 Q. No, no, no. I recognize that.

12 Now, also with regard to your independence,
13 Doctor, do you know any of the parties or any of the lawyers
14 involved in this case?

11:50 15 A. I fortunately know no one.

16 Q. I noticed you came here today with a woman. Is that your
17 wife?

18 A. Yeah, that's my wife. She wanted to come with me.

19 Q. Did you see her greet Ms. Balli, KBR's lawyer, this morning
11:50 20 when she came in? They waved at each other and said hello.

21 Did you see that?

22 A. No. I didn't see it.

23 Q. Any idea how your wife might know Ms. Balli?

24 A. I don't know. You can ask her.

11:50 25 THE COURT: No, no, not right now. No.

11:50 1 MR. ESTEFAN: Pass the witness.

2 THE COURT: Okay. Thank you.

3 Any redirect?

4 MR. HEDGES: No.

11:51 5 THE COURT: Any redirect?

6 MR. McKINNEY: One or two points, your Honor.

7 **REDIRECT EXAMINATION**

8 BY MR. McKINNEY:

9 Q. Your opinions in this case have been challenged because
11:51 10 other treaters reached different conclusions.

11 A. Yes.

12 Q. All right. In every instance, the other treaters have had
13 to rely solely and exclusively on the history given to them by
14 Jamie Leigh Jones, correct?

11:51 15 A. Yes, plus, I think, some records; but certainly nothing --

16 Q. It would be the records that the attorneys retaining those
17 experts chose to share with those experts?

18 A. That's correct.

19 Q. You, on the other hand, have asked for and received
11:52 20 virtually every record generated in this case?

21 A. Yes. If there was -- as I reviewed the records, if there
22 was something there that I thought might be helpful, I would
23 contact the law clerk for the judge and say, "Can you get me
24 these records?" And they would appear.

11:52 25 Q. In virtually every instance regarding the other treaters

11:52 1 and independent evaluators, Ms. Jones gave inaccurate histories
2 with regard to her prior history of anxiety and depression, her
3 prior history of sexual assault, and her prior history of
4 sexually transmitted diseases?

11:52 5 A. Yes.

6 Q. And in many instances, if we were to go through each of the
7 histories that Ms. Jones gave to the various treaters and
8 independent evaluators regarding the events in Iraq, we would
9 find different stories, would we not?

11:53 10 A. Yes.

11 Q. And the stories tend to get better over time, do they not?

12 MR. ESTEFAN: Your Honor, objection, leading
13 repeatedly.

14 MR. McKINNEY: I can rephrase it.

11:53 15 THE COURT: Okay. Why don't you do that.

16 BY MR. McKINNEY:

17 Q. Do the stories get better over time?

18 A. They fill in details and add other things.

19 Q. Does Ms. Jones' history and description of her physical
11:53 20 symptoms, does it expand over time or decrease over time?

21 A. It expands over time.

22 Q. And is this consistent throughout all the treaters? If we
23 were to line up chronologically every history that Ms. Jones
24 has given since returning from Iraq, does the story change and
11:53 25 change to Ms. Jones' advantage in virtually every instance?

11:53 1 A. I believe it does.

2 Q. You have had, unlike any of the other treaters -- or have
3 you had, unlike any of the other treaters, access to the entire
4 record, both sides, every witness, every item of testimony?

11:53 5 A. I have had thousands of pages of materials and depositions,
6 and medical records to review.

7 Q. And have you put every single material event that you could
8 identify in those records in a lengthy chronology from minute
9 to minute, day to day, witness to witness, identifying
11:54 10 virtually everything that has happened in Ms. Jones' life from
11 about the year 2000 until about the year 2011?

12 A. Well, for whatever I had, I did put together, just as you
13 said in this report, 230 pages.

11:54 14 Q. With regard to you taking two different positions in this
15 case --

16 THE COURT: The argument was that in some places he
17 believes her story and some places he did not.

18 MR. McKINNEY: I think that opens the door for me to
19 ask some follow-up questions, your Honor.

11:55 20 THE COURT: Well, we can go question by question.

21 MR. McKINNEY: Yes, sir.

22 BY MR. McKINNEY:

23 Q. Do you believe that Jamie Leigh Jones was drugged on the
24 night of January 28th, 2005?

11:55 25 MR. ESTEFAN: Your Honor, objection. We have to

1 approach if Mr. McKinney is going to go down --

2 MR. McKINNEY: I think the door has been opened.

3 MR. ESTEFAN: The door certainly has not, Judge.

4 THE COURT: Let's not pursue that. I understand the
5 line we're trying to draw is a fine one, but let's not --
6 whether he believes or not is not really his province. Do you
7 understand that --

8 MR. McKINNEY: I will rephrase the question.

9 BY MR. McKINNEY:

10 Q. Did you find substantial credible evidence in the record
11 for the proposition that Ms. Jones was not drugged on the night
12 of July the 28th, 2005?

13 THE COURT: You may answer if you have an answer. I
14 don't want you to speculate.

15 A. Well, as far as I know, the drug screen was negative for
16 the -- can I --

17 THE COURT: Is it fair, Dr. Scarano, to say that
18 toxicology and drug use is not your expertise, at least when it
19 comes to drugs?

20 THE WITNESS: Toxicology is not, but drugs are a very
21 important part of a forensic psychiatrist's thing because most
22 criminals have been using drugs and we have to understand the
23 effects of those drugs on the individual.

24 THE COURT: But let me ask this. The basic tenor of
25 your report was to explain what you thought, if you accepted

1 Ms. Jones' account of what happened to her on the night of
2 July 27th. Is that fair?

3 THE WITNESS: Yes, that's fair, Judge.

4 THE COURT: Okay. All right.

5 BY MR. McKINNEY:

6 Q. Your opinion, based on Ms. Jones' malingerling
7 post-traumatic stress disorder, is based upon your assuming --
8 not necessarily believing, but assuming the truth of her
9 statement that she had two sips from a drink and has no memory
10 thereafter?

11 A. Yes.

12 Q. If Ms. Jones did not lose her memory that night, if she
13 remained fully conscious and had consensual sex with Charles
14 Bortz, is there any support in the medical literature for
15 consensual sex, freely entered into, producing post-traumatic
16 stress disorder?

17 A. No.

18 Q. Is there support in the literature for consensual sex,
19 freely entered into, producing subsequent anxieties or
20 depressions because of the effect, the follow-on subsequent
21 effect of having had consensual sex with a particular person
22 under particular circumstances?

23 A. Well, if the circumstances were that you had a sexually
24 transmitted disease and you didn't reveal that to your partner,
25 you could have a lot of anxiety and distress and develop a

11:58 1 depression because of that.

2 MR. MCKINNEY: Pass the witness.

3 MR. HEDGES: Your Honor, in view of one of the last
4 questions by Mr. Estefan, I would like to conduct a
11:58 5 brief demonstration in the court, if I may?

6 THE COURT: Okay. Have they seen the exhibit or
7 whatever it is?

8 MR. HEDGES: I'm just going to ask some people to
9 stand up, who was waving at who, since he brought up allegedly
11:58 10 Ms. Balli waving at the doctor's wife.

11 THE COURT: Okay. All right.

12 MR. HEDGES: Ms. Shaw, would you stand up, please?

13 *(Ms. Shaw complies)*

14 BY MR. HEDGES:

11:59 15 Q. Doctor, that's a colleague of ours, Ms. Shaw.

16 Who is sitting in front of Ms. Shaw?

17 A. That's my wife, Ida.

18 MR. HEDGES: Ms. Balli, would you stand up, please?

19 *(Ms. Balli complies)*

11:59 20 MR. HEDGES: Would you face Ms. Shaw?

21 *(Ms. Balli complies)*

22 MR. HEDGES: Would you wave at Ms. Shaw?

23 *(Ms. Balli complies)*

24 BY MR. HEDGES:

11:59 25 Q. Does it look like Ms. Balli is waving at your wife, Doctor?

11:59

1 A. No.

2 Q. But she's waving at somebody standing immediately behind
3 your wife. Is that correct?

11:59

4 A. From the demonstration that you gave, that would be the
5 appearance.

6 Q. Okay. Thank you.

7 Doctor, when you began working on this case, did
8 anyone tell you that they wanted you to end up at a certain
9 result at the end of your investigation and the writing of your
10 report?

11:59

11 A. Yeah. Ladies and gentlemen, when the Judge contacted me
12 and asked me to do an independent evaluation, the rule was that
13 none of these attorneys were allowed to talk to me, contact me,
14 send me anything; everything had to go through the Court.

12:00

15 Q. And let's even go outside of the attorneys, outside the
16 attorneys, has anyone at any time, up to right now, in this
17 case ever told you that they wanted you to come up with a
18 certain result?

19 A. Absolutely not.

12:00

20 MR. HEDGES: Pass the witness, your Honor.

21 THE COURT: Any recross?

22 MR. ESTEFAN: Very, very brief, your Honor.

23 **RECROSS-EXAMINATION**

24 BY MR. ESTEFAN:

12:00

25 Q. I'm sorry to end our morning right before lunch on the

1 subject of sexually transmitted diseases.

2 A. Okay.

3 Q. But I have just one quick question about that.

4 A. Sure.

5 Q. Did you know that Jamie had warned a partner before Iraq
6 and her husband -- the man who would become her husband after
7 Iraq, before they had sex that she had sexually transmitted
8 diseases?

9 A. No. I don't know because I saw no record of that.

10 MR. ESTEFAN: That's all I have. Pass the witness.

11 THE COURT: Okay. Ladies and gentlemen, we'll take
12 our lunch break. Try to be back by 12:45, please.

13 *(Jury not present)*

14 THE COURT: You may step down. You're free to go.

15 Can you tell me who the next witness is going to
16 be?

17 MR. KELLY: Teresa Westcott, your Honor.

18 MS. VORPAHL: Your Honor, this is one of the remaining
19 me-too witnesses. We filed a brief over the weekend. We would
20 like an opportunity to again argue that these post July, 2005,
21 witnesses have nothing relevant to add. Should the Court
22 decide, nevertheless, that your Honor is going to consider
23 their testimony, then we want the opportunity to voir dire
24 them.

25 THE COURT: Okay. What does she bring to the table?

12:02 1 MR. KELLY: She brings quite a bit, your Honor. First
2 of all, she was a victim of rape at -- in Baghdad. It was
3 2006. She was one of five victims who was raped by the same
4 assailant. All five originally were coming forward. Four of
12:02 5 them backed off. Four were retained in employment by KBR.

6 This one was fired because she went forward. In
7 addition, she worked directly for the same boss who was Jamie
8 Leigh Jones' boss at the time of Jamie Leigh Jones' rape. And,
9 so, it certainly goes to KBR's response and particularly this
12:03 10 boss' response to women who claim rape.

11 THE COURT: Was it the same base?

12 MR. KELLY: I believe so, your Honor. I know it was
13 in the same -- I know it was both Baghdad. I'm not sure if it
14 was Camp Hope or if it was Camp Victory. I'll have to get her
12:03 15 in here to actually testify to that.

16 The other thing she can testify and certainly
17 will testify to is that, again, as to the environment that
18 Ms. Jones found herself in, her boss was living in violation of
19 KBR's rules with his girlfriend on the base, well known to
12:03 20 everyone there. So, it's simply -- actually, and there's more.

21 Prior to her rape, she had been sexually
22 harassed, she complained about it. And when she did complain
23 about it, she was moved, like so many others, to Fallujah, a
24 well known more hostile base. She will also talk about being
12:04 25 forced into arbitration and, despite their protestations

1 otherwise, she'll talk about how arbitration was forced -- that
2 she was forced to remain silent following arbitration.

3 Essentially, that's it. So, I think it's
4 certainly relevant. And it's not "me-too."

5 THE COURT: Ms. Vorpahl.

6 MS. VORPAHL: Well, your Honor, she can't possibly
7 have personal knowledge of five rapes.

8 I mean, correct me if I'm wrong, she didn't see
9 these women raped.

10 MR. KELLY: No. She has personal knowledge of five
11 women originally coming forward -- sorry -- four, in addition
12 to herself, originally coming forward and then the other four
13 backing off, the other four being retained by KBR while she was
14 fired.

15 MS. VORPAHL: All complete hearsay. She was
16 terminated because she -- first of all, she didn't even report
17 her allegations until months after she claimed that they
18 occurred. She was terminated for violation of KBR's drug
19 policy.

20 MR. KELLY: Actually, she was terminated because she
21 had a Valium in her --

22 MS. VORPAHL: Well, why don't you finish and then
23 I'll --

24 MR. KELLY: -- system for which she had a
25 prescription.

12:05 1 Well, that's a lie and you know it.

2 THE COURT: We don't need this.

3 Ms. Vorpahl, go ahead and finish.

4 MS. VORPAHL: Well, she was terminated in September of
12:05 5 2006 because she was out and appeared high. She said she was
6 on Phenergan and Valium. They found alcohol in her room in
7 violation of the policy at that camp.

8 THE COURT: Which camp was she at, according to you?

9 MS. VORPAHL: I believe that she was at Camp Victory.
12:05 10 I'm not positive either.

11 THE COURT: Okay. We'll -- I hate to do this to you
12 guys, but let's come back at 12:30. And I want her on the
13 stand, and we'll voir dire her.

14 MR. KELLY: She's on her way into town, your Honor. I
12:05 15 believe she --

16 THE COURT: Tell the jury we're going to extend lunch
17 to 1:00 o'clock, please.

18 MR. KELLY: I don't know if she's going to be in till
19 1:00, your Honor. She's on her way.

12:05 20 MS. VORPAHL: Your Honor, again, I would like the
21 opportunity to urge the irrelevance and inadmissibility of any
22 of this testimony. If it goes to anything at all, it is -- it
23 couldn't be more than punitive damages. And why we would allow
24 these witnesses to testify to things that occurred after
12:06 25 Ms. Jones was no longer in active employment in Iraq with KBR

1 is --

2 THE COURT: Well, it's close in time, is the only
3 reason I'm considering it. Let's be back here 12:45. If she's
4 ready for us, we'll proceed with her. If not, we'll talk about
5 the legal issues.

6 MS. VORPAHL: Thank you, your Honor.

7 MR. HEDGES: Your Honor, I think they represented they
8 might have some other me-too witnesses. Maybe one of them is
9 available sooner possibly?

10 THE COURT: If so, we'll take those whom we can find
11 and -- it has to be one by one. I'm not going to deal with all
12 of them as a class.

13 MR. ESTEFAN: Your Honor, before you step down -- I'm
14 sorry. I just need to make a record. And that is that

15 Dr. Scarano, in answer to Mr. Hedges' last question, directly
16 violated the parameters you placed around him to not talk about
17 his court appointed status. He clearly referenced that, and
18 he's an officer of the court as a lawyer. And I just -- I'm
19 making my record, your Honor.

20 THE COURT: Okay. But he said that the -- I think he
21 said I contacted him.

22 MR. KELLY: He also said you provided the documents to
23 him, that he wasn't permitted to talk to the lawyers. Your
24 Honor, he was directly violating the Court's order.

25 MR. ESTEFAN: I know Mr. Hedges may not have intended

12:07 1 that be to the answer, but Dr. -- and I'm not casting stones at
2 Mr. Hedges. All I'm saying is that Dr. Scarano, as an officer
3 of the court and a lawyer, was appraised of the Court's rulings
4 on that; and he went clearly afoul of that ruling. So, I'm
12:07 5 making a --

6 THE COURT: The problem is we got into the issue of
7 bias rather heavily and that -- I think Mr. Hedges' question
8 was responsive to that charge. And it was not out of bounds to
9 say that nobody had contacted him and the evidence had come
12:07 10 from the Court. The words "court appointed," I think, never
11 were uttered.

12 MR. ESTEFAN: No, not exactly; but he said he was
13 contacted by the Court.

14 THE COURT: Well, when you accuse somebody of bias,
12:08 15 it's hard to forbid them from responding. I mean, that's -- I
16 don't know who opened the door, but your point is noted and so
17 is defendants'.

18 *(Recess was taken from 12:08 p.m. to 12:47 p.m.)*

19 *(Jury not present)*

12:51 20 THE COURT: Good afternoon. Welcome back.

21 Do we have a witness here yet?

22 MR. KELLY: We do, your Honor.

23 THE COURT: Okay. Let's put him or her on, then.

24 MR. ESTEFAN: It's "she." It's Teresa Westcott, your
12:51 25 Honor.

1 THE COURT: Okay.

2 *(Witness being summoned to the stand)*

3 THE COURT: Ms. Westcott, good afternoon, ma'am.

4 THE WITNESS: Good afternoon, sir.

5 THE COURT: Make your way up here. If you can thread
6 this needle, we're going to have you in this seat.

7 Before you take your seat, Mrs. Loewe will
8 administer the oath.

9 THE CASE MANAGER: Do you solemnly swear the testimony
10 you're about to give in the matter now before the Court will be
11 the truth, the whole truth, and nothing but the truth?

12 THE WITNESS: Yes.

13 THE COURT: Okay. If you would have a seat.

14 All right. The defendants' lawyers have some
15 questions about your testimony we'll take up before the jury
16 comes back to join us.

17 MS. VORPAHL: Thank you, your Honor.

18 **TERESA WESTCOTT, DULY SWORN, TESTIFIED:**

19 **VOIR DIRE EXAMINATION**

20 BY MS. VORPAHL:

21 Q. Ms. Westcott, my name is Joanne Vorpahl. You and I have
22 never met before, have we?

23 A. No, ma'am.

24 Q. I represent KBR in this lawsuit.

25 A. Yes, ma'am.

1 Q. And as the Judge said, I do want to ask you a few
2 questions.

3 There are some problems with acoustics in here;
4 so, we've both got to try to speak into the microphone.

5 The information I have is that on March 20th of
6 2007 you filed a charge of discrimination with the Equal
7 Employment Opportunity Commission against KBR. Do you recall
8 whether that's correct or not?

9 A. I don't recall the exact date, but that sounds about right.

10 Q. All right. The information I have is that one month later,
11 on April 20th of 2007, you settled your dispute with KBR. Does
12 that sound correct to you?

13 A. No. Not the April date to settle, I don't think.

14 THE COURT: Did you settle?

15 A. I don't recall --

16 THE WITNESS: Yes, I did.

17 THE COURT: What's your best approximation of the
18 date?

19 THE WITNESS: I believe it was sometime in June, but I
20 don't recall the exact date.

21 THE COURT: We needn't be too concerned.

22 BY MS. VORPAHL:

23 Q. I have the agreement. I'd be happy to refresh your
24 recollection with it.

25 A. That's fine. I don't remember the date.

12:54

1 MS. VORPAHL: May I --

2 THE COURT: You may do that.

3 MR. KELLY: May I see it?

4 MS. VORPAHL: (Indicating)

12:54

5 BY MS. VORPAHL:

6 Q. Will you take a look at that agreement and tell me if
7 that's the settlement agreement that you signed with KBR and if
8 it's not, in fact, dated April 20th, 2007?

9 A. Yes, ma'am, it is.

12:55

10 Q. Okay. And that looks like your agreement?

11 A. Yes, ma'am, it is.

12 Q. You were represented by counsel through that process.

13 Isn't that right?

14 A. Yes, ma'am.

12:55

15 Q. That wasn't Mr. Kelly, though?

16 A. No, sir. No, ma'am.

17 Q. But I understand -- and maybe I'm mistaken, but I
18 understand that Mr. Kelly now represents you.

19 A. That is correct.

12:55

20 Q. All right. And in what regard does he now represent you?

21 MR. KELLY: Your Honor, that violates attorney-client
22 privilege. There's no reason to go into that, for what I
23 represent this witness for.

24 MS. VORPAHL: I'm not asking for the substance of any
12:55 25 communications. I'm wondering if --

1 BY MS. VORPAHL:

2 Q. Is it with regard to a claim against KBR?

3 A. No.

4 Q. Okay. Okay.

5 THE COURT: But I think we need to know whether you
6 represent her at least for purposes of whether you can object
7 on her behalf right now.

8 MR. KELLY: I do not represent her in this lawsuit,
9 your Honor, in connection with her testimony here; but the
10 reasons for which I represent her I think are strictly
11 attorney-client privilege.

12 THE COURT: Well, the privilege covers requests for
13 legal services or legal advice. The question being asked now
14 is not what you might have said in providing advice but what is
15 the endeavor in which you represent her, which may be relevant
16 to what her testimony is going to be here today. I mean, if
17 it's something completely different, if it's wage and hour
18 violations --

19 MR. KELLY: It's completely separate from her
20 allegations against KBR, your Honor.

21 THE COURT: Okay.

22 MS. VORPAHL: Respectfully, however, if it is another
23 employment claim, I think that I'm entitled to know that, as I
24 believe it might go to --

25 THE COURT: Well, is it against KBR?

1 MR. KELLY: It is not against KBR, your Honor.

2 THE COURT: Okay. Let's leave it alone. Let's go.

3 MS. VORPAHL: Your Honor, I do think I would be
4 entitled to know if it was another employment claim.

5 THE COURT: Well, we're about to have a contested
6 issue on something that, to me, is way off the mark. Let's
7 talk about issues that are more relevant. We don't have much
8 time.

9 BY MS. VORPAHL:

10 Q. In connection with the settlement with KBR, you did sign --
11 part of it was a confidentiality agreement. Is that right?

12 A. That's correct.

13 Q. And you agreed that if you were ever asked about the status
14 of your disputes with the company, you could only say that,
15 quote, "The matter is settled and nothing more can be said,"
16 end quote?

17 A. Except for being subpoenaed. If I get subpoenaed, I can
18 testify in court.

19 Q. So, you have been subpoenaed here today?

20 A. Yes, I have.

21 Q. Okay. And who issued that subpoena?

22 A. The Kelly Law Firm.

23 Q. Okay. Let's take a look at your agreement and find where
24 it says that.

25 A. On Page 3, first paragraph.

12:57 1 Q. So, it says, "From the date of this agreement forward, in
2 the event Ms. Westcott is asked about the status of any dispute
3 with the company, she may reply with the words or words to the
4 same effect, quote, 'The matter is settled and nothing more can
12:58 5 be said,' but will not otherwise indicate the terms of the
6 settlement, including the amount paid, unless required by
7 subpoena, court order, administrative order, or otherwise
8 required by law."

9 Doesn't that last part say that if you're
12:58 10 subpoenaed you can indicate the terms of the settlement?

11 A. I'm not a lawyer. I just know that I was subpoenaed, and
12 I'm here to testify.

13 Q. All right. All right. Very well.

14 You began working for KBR in October of 2005. Is
12:58 15 that correct?

16 A. Yes, ma'am.

17 Q. All right. Do you know when the events that give rise to
18 the lawsuit that we're here on occurred?

19 A. I believe it was not during that time frame.

12:58 20 Q. Right. It was prior to that, in July of 2005. You weren't
21 employed for KBR during that -- or by KBR during that period,
22 July of 2005, were you?

23 A. No. I started in October of 2005.

24 Q. And the claims against KBR that were the basis of your
12:59 25 claim occurred in June of 2006. Is that right?

12:59 1 A. That's correct.

2 Q. But you didn't report that allegation to anyone until
3 September of 2006. Is that right?

4 A. I did tell my supervisors that it had happened. It was not
12:59 5 handed to the top five management for -- to be handled; but I
6 did tell somebody, yes, several people.

7 Q. Okay. Tell us what your claim was.

8 A. My claim was that I was raped by a male supervisor.

9 I had four other male supervisors, managers in
12:59 10 the room; and they did nothing to stop or help me when I was
11 being harassed, talked down to, abused.

12 Then when he, Scott Hickman --

13 THE WITNESS: Am I allowed to say his name?

14 THE COURT: Yes, you are.

12:59 15 A. Okay. He raped me. He came into my room. I was sound
16 asleep. He wasn't somebody I partied with or went out with or
17 had anything to do. He was just a supervisor. He came into my
18 room. I woke up; and he was attacking me, raped me. And
19 the -- then KBR fired me when I did report it.

01:00 20 When other women were attacked, they came
21 forward, I came forward but then they backed away and they kept
22 their jobs. I didn't. I continued to cooperate with the CID,
23 and I was first beaten up and then fired.

24 BY MS. VORPAHL:

01:00 25 Q. Okay. You said that you were raped by a male supervisor,

01:00

1 Scott Hickman. Is that right?

2 A. Yes.

3 Q. Now, I think I misunderstood this. And four other men
4 watched as you were raped?

01:00

5 A. No. They watched when I was in the office -- we all worked
6 in the same office -- as he would come in with a full erection
7 and grab himself and say, "You want some of this, don't you,"
8 or "You're a hard egg to crack. I'm going to crack you," or,
9 "You don't like me staring at you, do you?"

01:00

10 And these were all male supervisors saying this.

11 Q. All right. Who were those male supervisors?

12 A. Neal -- I can remember the first names. I don't remember
13 their last names. But there was Saigh, Neal, Billy Tompkins,
14 Darren. Those are the main ones. Those are all direct male
15 supervisors and managers.

01:01

16 Q. Who witnessed this conduct that you're describing?

17 A. Yes, ma'am.

18 Q. And did nothing about it?

19 A. Did nothing about it, as much as I asked them to.

01:01

20 Q. And when was that?

21 A. That was consistently every day, the whole time I was
22 working in IT.

23 Q. So, every day from October of 2005?

24 A. Well, in October what happened, I was at Al Asad and there
25 was a male counterpart there that was harassing me there, too.

01:01

01:01 1 And he did it in front of HR; and he was actually, you know,
2 told to stop.

3 Q. Okay. So, the first time that you suffered harassment was
4 at Al Asad.

01:01 5 You were actually in four places over about three
6 months, right? You were --

7 A. Yes, ma'am. Well, Al Asad, Fallujah, and in Baghdad.

8 Q. In that order?

9 A. Yes, ma'am.

01:01 10 Q. And at Baghdad you were at Camp Victory. Isn't that
11 correct?

12 A. I lived at Parker for a short time, but I did work at
13 Camp Victory and then I lived there at the end.

14 Q. You were never at Camp Hope, were you?

01:02 15 A. No.

16 Q. Okay. So, the first time that you say you suffered
17 harassment was at Al Asad?

18 A. That's correct.

19 Q. Did you make a complaint?

01:02 20 A. Yes, I did.

21 Q. A formal complaint?

22 A. No, it wasn't formal. I was scared that I would get fired
23 because we were told if we ever complained about sexual
24 harassment, we would be fired.

01:02 25 Q. Who told you that?

01:02 1 A. Everyone, all the women there. The operations girls, the
2 guys, I mean, they just said, "If you report sexual harassment,
3 you will be fired."

4 Q. Everybody there told you that?

01:02 5 A. Everyone that I confided in and told what was happening.

6 Q. Did you ever go to HR?

7 A. Not in Al Asad. HR brought me in; they pulled me in. I
8 didn't go to them the first time.

9 Q. In fact, at Al Asad you reported problems with a supervisor
01:02 10 and some computers and you said, "I don't" -- is this where you
11 said, "I don't wish to report sexual harassment," and HR came
12 and interviewed you anyway?

13 A. That's correct, the first time.

14 Q. All right. Because HR wanted to find out what it was that
01:03 15 you had to say?

16 A. Correct. Because he had been released from KBR four times
17 prior to this incident and sent home and then returned back to
18 KBR.

19 Q. How do you know that?

01:03 20 A. Because I was there the fifth time that he was there and
21 the HR -- Terrence Copling -- he was the head of HR EAP -- told
22 me that.

23 THE COURT: Ms. Westcott, you're obviously very
24 articulate; but I'm going to ask you to slow up just a little
01:03 25 bit. She's got to try to keep up with every word.

01:03

1

THE WITNESS: Okay. Sorry.

2

THE COURT: Everybody does it, including me.

3

THE WITNESS: Okay. Yes.

4

BY MS. VORPAHL:

01:03

5

Q. So someone told you that Terrence Copling had been released from KBR four times and was back a fifth?

6

7

A. No, ma'am. Terrence Copling was in charge of the EAP HR program.

8

9

Q. Okay.

01:03

10

A. He called me into his office and stated that another HR person had witnessed Matt -- I don't remember Matt's last name -- but had witnessed Matt standing over my desk, threatening me that he got me there, that he could get me out of there, and did I want to file a formal complaint.

11

12

13

14

01:04

15

I said no, because I know that people get fired for filing complaints here. I had heard it before I got there. I heard it the whole time I was there. We were always in fear as women for our jobs because the guys were -- really played rough there. And it wasn't just play. We were very threatened.

16

17

18

19

01:04

20

21

So, I said, "No, I'm not going to file a report."

22

23

I had just gotten on ground. I didn't want any problems.

24

01:04

25

And, so, he said, "Well, that's very nice of you" -- Terrence Copling said this to me -- he said, "because

01:04 1 he has a file this thick. He's already been released four
2 times."

3 And the thing is that they would go home for
4 three months, four months for detention or whatever you want to
01:04 5 call it and they'd allow them to come back and Matt was one of
6 them that came back.

7 Q. And Terrence Copling was the source of that information?

8 A. That is correct.

9 Q. You did not witness people going home for four months and
01:04 10 then coming back.

11 A. Yes, I did. There were people that got -- not at that
12 point. But further in my term, people were written up for
13 drinking and sent home for having alcohol, beer cans or
14 whatever; and then they would come back, like, three months
01:05 15 later.

16 And there's one gentleman -- he has dark hair.
17 He's, like, head of HR over there now. Or he's now with Fluor,
18 but he -- James Video. He was sent home for alcohol, and he's
19 back there working again.

01:05 20 Q. But for Fluor, for a different company?

21 A. He came back with KBR. He just started with Fluor a couple
22 of months ago.

23 Q. Okay. And when did he come back with KBR?

24 A. Three months almost to the day that they sent him home.

01:05 25 Q. And that was for violation of the alcohol policy?

01:05 1 A. General Order No. 1, which means you're never supposed to
2 be able to come back.

3 Q. Now, you had alcohol in your room?

4 A. No, I didn't.

01:05 5 Q. You're saying --

6 THE COURT: Ms. Vorpahl, I think this is a witness I
7 need to allow. You'll have a chance to cross her, but I think
8 she has information that is relevant.

9 MS. VORPAHL: Your Honor, a lot of this is hearsay.
01:05 10 And we're going to be up and down objecting to what's hearsay
11 and what's not unless we get a very clear understanding of what
12 she can testify to from personal knowledge. And I think I do
13 need to, respectfully, go on.

14 THE COURT: Well, but it sounds like to me that what
01:06 15 she would be quoting is admission by a party opponent; so, it
16 would come in as not hearsay.

17 MS. VORPAHL: Your Honor, I don't see how that could
18 possibly be an admission by a party opponent, that she heard
19 generally from all sorts of -- from everybody --

01:06 20 THE COURT: Well, you can pin her down on who she
21 heard it from. But it would be a statement by a person
22 authorized by the party to make a statement or a statement by
23 the party's agent or a servant concerning a matter within the
24 scope of the agency or employment.

01:06 25 MS. VORPAHL: Your Honor, I simply disagree; and I

01:06 1 would object. This woman -- I don't believe she knows Charles
2 Bortz. I don't believe that she knows Jamie Jones. Certainly
3 she knows neither of them as employees of KBR. She was not
4 there that night.

01:06 5 THE COURT: When you have a company as big as KBR,
6 conduct that is similar as this to the conduct alleged in this
7 case cannot be excluded just because it was at a different base
8 or just because it was three months later. That's drawing the
9 circle entirely too narrowly.

01:07 10 MR. RUNIONS: But, your Honor, the Fifth Circuit case
11 law is fairly clear that if it did not affect the term and
12 condition of employment that it cannot go to a harassment
13 claim. We provided the Court with many, many cases that says
14 that exact thing.

01:07 15 THE COURT: No. It goes more to what the employer
16 knew or should have known.

17 MR. KELLY: This does go to the term and condition of
18 employment, your Honor. This is evidence of the terms and
19 conditions of the employment in Baghdad for women. That's all
01:07 20 it is.

21 MS. VORPAHL: The Fifth Circuit says you don't look at
22 post-event conduct as evidence of that. That's what we're
23 saying.

24 THE COURT: But what I am saying is we might look at
01:07 25 it for whether the employer knew or should have known of the

01:08 1 harassment.

2 MR. RUNIONS: But, your Honor, for which cause of
3 action? For fraudulent inducement?

4 THE COURT: No, not for that.

01:08 5 MR. McKINNEY: Judge, you think I don't have a dog in
6 this fight; but I really do because any time someone's
7 mentioned the R word, there is blowback on my client.

8 THE COURT: You'll have every opportunity to
9 cross-examine her.

01:08 10 MR. McKINNEY: And I know I will, Judge. That's not
11 the question. The question is what does this witness have to
12 say that makes the only real fact issue in this case more or
13 less likely.

14 She has nothing to say that is even indirectly
01:08 15 probative on whether the sex between Jamie Leigh Jones and
16 Charles Bortz was consensual. However, the purpose of the
17 offer is to say it happened at a later point in time, in
18 another location, to a KBR female; therefore, it could have
19 happened in this case. That is totally irrelevant and
01:09 20 hopelessly -- it's very prejudiced.

21 THE COURT: It's clearly very inflammatory testimony.
22 I understand that. I understand that.

23 But it goes directly to the question of whether
24 there was a prevailing attitude in the camp, that men could get
01:09 25 away with sexual harassment and women were scared to report it.

01:09 1 MR. MCKINNEY: But that's not the case before the
2 Court in terms of Ms. Jones. She reported; it was promptly
3 investigated. There's no evidence whatsoever of anybody trying
4 to sweep this under the rug.

01:09 5 The State Department took over the investigation.
6 After her statement had been taken, she was being -- depending
7 on how you want to interpret the facts -- I think the more
8 reasoned interpretation was she was being -- she was placed in
9 the hooch because, based on her original story, there were
01:09 10 multiple unknown assailants at large.

11 There's nothing about -- nothing about Ms. Jones'
12 testimony, your Honor, dovetails with any of these others
13 witnesses' alleged experiences.

14 THE COURT: Well, but an issue -- not the issue -- an
01:10 15 issue is whether Mr. Bortz or others like him knew that they
16 had latitude to conduct themselves this way toward women.

17 MR. MCKINNEY: And what evidence is there at all, at
18 all, that Charles Bortz, as a fireman at Camp Hope, had any
19 knowledge of Scott Hickman, at some other camp, being the kind
01:10 20 of person that Scott Hickman is, according to this witness?
21 None whatsoever.

22 And you have to balance the scant probative value
23 of these inflammatory accusations against -- well, against the
24 inflammatory nature of the allegations.

01:10 25 Virtually nothing is proved, but the sound of the

01:11 1 minimal proof is quite loud and it echoes and reverberates on
2 and on. There's no probative evidence here, great prejudice --

3 THE COURT: I have every confidence you and
4 Ms. Vorpahl or other counsel can bring that out.

01:11 5 MS. VORPAHL: May I just say one more thing?

6 THE COURT: Yes, ma'am.

7 MS. VORPAHL: I think that the charge that your Honor
8 will submit on the sexual harassment claim -- and this is
9 without waiver of my right to file -- to move for a directed
01:11 10 verdict on the sexual harassment claim --

11 THE COURT: I understand.

12 MS. VORPAHL: -- will consist of three questions:
13 "Was plaintiff sexually harassed by one or more of her
14 coworkers in Iraq? Did KBR know or" -- and this is conditioned
01:11 15 on the a "yes" answer to the prior question -- "Did KBR know
16 or, in the exercise of reasonable care, should KBR have known
17 that plaintiff was being sexually harassed by one or more of
18 her coworkers in Iraq?" And, 3, again conditioned, "Did KBR
19 fail to take prompt remedial action to stop the sexual
01:11 20 harassment of plaintiff in Iraq?"

21 I don't believe that the testimony of this
22 witness goes to any of those issues, makes any of them more or
23 less likely.

24 THE COURT: Okay. Your arguments are noted. They are
01:12 25 obviously genuine and well expressed. They are overruled.

01:12

1

Will you get the jury in, please?

2

3

4

01:12

5

MR. McKINNEY: Judge, one last thing. I anticipate that this witness may offer, gratuitously, testimony about conversations with Eric Iler after a point in time when he was no longer employed by KBR. And --

6

THE COURT: Those wouldn't come in.

7

MR. KELLY: I won't ask a thing about Eric Iler.

8

MR. McKINNEY: All right. Good enough.

9

THE COURT: Would all please rise for the jury?

01:12

10

(Jury present)

11

THE COURT: Members of the jury, please be seated.

12

13

Ladies and gentlemen, this is one of plaintiff's witnesses. She has already been sworn to tell the truth.

14

MR. KELLY: May it please the Court.

01:13

15

DIRECT EXAMINATION

16

BY MR. KELLY:

17

Q. Please introduce yourself to the ladies and gentlemen of the jury.

18

19

A. My name is Teresa Westcott, and I worked for KBR from '05 to '06.

01:13

20

21

Q. And when in '05 did you arrive -- or did you work for KBR?

22

A. October of '06 -- I'm sorry, of '05.

23

Q. October of '05?

24

A. Yes.

01:13

25

Q. And where did you first work, Ms. Westcott?

01:13 1 A. Originally I worked in Al Asad in Iraq.

2 Q. Okay. And tell me what you did at Al Asad.

3 A. I was an administrative assistant when I arrived, for the
4 program manager for all of the BNC sites.

01:14 5 Q. Did you have some concerns that brought you into contact
6 with human resources while you were at Al Asad?

7 A. Yes. I had one man that kept harassing me, kept coming to
8 my hooch, kept walking around the office, threatening me that
9 he could get me fired if I didn't comply. And he was witnessed
01:14 10 doing that.

11 Q. Who was this man?

12 A. Matt -- and I can't remember his last name. Matthew. I --
13 can't remember his last name.

14 THE COURT: Can you describe his position?

01:14 15 THE WITNESS: Yes. He was one of the operations
16 people. He worked in the operations department.

17 BY MR. KELLY:

18 Q. Do you recall who you spoke with in human resources about
19 Matt?

01:14 20 A. Terrence Copling.

21 Q. Who was Terrence Copling? What was his position?

22 A. Terrence Copling was over all of EAP for theater, employee
23 assistance program, HR issues, dispute resolutions and such.

24 Q. How did it come about that Terrence Copling learned of the
01:15 25 harassment you were suffering at Matt's hands?

01:15 1 A. I was in the office one day and it was one of the days that
2 Matt came into my office. He stands about 6' 4". And he --
3 and I was sitting at my desk. And he came and he put his hands
4 on the desk, leaned over, and got, like, an inch from my face
01:15 5 and told me --

6 MS. VORPAHL: Your Honor, I object to the hearsay
7 testimony.

8 THE COURT: You object to what?

9 MS. VORPAHL: The hearsay testimony, an out-of-court
01:15 10 statement by someone else.

11 MR. KELLY: I think --

12 THE WITNESS: He said it to me.

13 THE COURT: No. It comes within 801(d)(2). I'm going
14 to allow it.

01:15 15 MS. VORPAHL: And, your Honor, I just want my
16 objection noted and if --

17 THE COURT: It is noted. You have continuing
18 objection. It's preserved for appeal.

19 MS. VORPAHL: Thank you, your Honor.

01:15 20 A. So, he stood over my desk, an inch from my face, and told
21 me, "I got you here. I can take you out of here and" -- if I
22 didn't comply and why wasn't I coming to his hooch at night and
23 why wouldn't I pay him any attention.

24 And he started telling me, "I saw you get up ten
01:16 25 times last night and your light go on in your hooch."

01:16 1 So, he would stand outside my hooch and watch if
2 I would come or go or anything.

3 And, so, an HR employee was walking past the
4 office when he was in this position, threatening me. And I
01:16 5 walked around my desk and tried to get around him, and he
6 blocked the door. And that's when the HR person was walking
7 down the hall and had stuck their head in, said, "Is everything
8 okay?"

9 He turned around and said, "Yes, everything is
01:16 10 okay."

11 I said, "No."

12 And they walked -- they turned around and walked
13 down to their manager, reported it. And then Terrence Copling
14 was notified, and he had called me into his office a couple of
01:16 15 days later.

16 BY MR. KELLY:

17 Q. Did you learn anything about Matt when you spoke with
18 Terrence Copling with regard to complaints you had made?

19 A. Terrence first mentioned that perhaps I would be happier at
01:16 20 F1, which was, I believe, Baghdad. And I said, "Why? Why are
21 you moving me?"

22 And he said, "Well," he said, "we've had problems
23 with Matt before. And do you want to open a statement -- or
24 open a case?"

01:16 25 And I said, "No. Because I know people get fired

01:16 1 for that."

2 And he said, "Well, If you're not comfortable
3 opening a case," he goes, "I'm just letting you know he has,
4 like, four -- he's been released four times." And he said, "We
01:17 5 have enough on him to get rid of him."

6 And I said, "I don't want any part of that. I
7 know you get fired if you do that, I've been told."

8 So, he said, "Okay." He said, "Well, then, we
9 won't open a case."

01:17 10 But it was shortly after that that they moved me.

11 Q. How did you know you would get fired? How had you heard
12 you would get fired if you reported sexual harassment?

13 THE COURT: You need to tell me and tell the jury
14 specific people, not just "I heard" or "everybody knew."

01:17 15 THE WITNESS: Okay.

16 A. Melissa, she was over operations. She worked with Matt.
17 She said that two women had been let go for complaining about
18 Matt. She told me that. And I don't know her last name
19 either. I could find this if I needed to.

01:17 20 Then there was another female, she was a younger
21 female and she worked -- she was a floater in that building.
22 And she said, "Don't complain about the guys here," she said,
23 "because they'll either start moving you or they'll get rid of
24 you."

01:17 25 So -- and then, before I come to KBR, I had

01:17 1 talked to Matt; and he's the one that told me and kind of
2 instilled the fear in me that, you know, "You can complain all
3 you want, but they're just going to mark you as a troublemaker
4 and release you, as a female."

01:18 5 Q. Fair to say it was common knowledge that if you complained,
6 you were fired?

7 A. It was common knowledge. There was probably more people
8 that told me directly, but that was a long time ago.

9 Q. After your conversation with Terrence Copling, what
01:18 10 happened with you?

11 A. I went back to my office, and it was probably a day or two
12 later. My manager, the program manager of operations, the PMO,
13 Wayne Lanham, he informed me that they were going to have me
14 start working out of Fallujah.

01:18 15 Q. So, you moved to Fallujah?

16 A. So, they moved me to Fallujah. And he said that it was not
17 a direct result of that situation, and he made it very clear it
18 was not a direct result of that situation. But I got to
19 Fallujah, and there were no managers to work for. I was just
01:18 20 sitting in an office by myself with nothing to do. So --

21 Q. So, after complaining of sexual harassment at Al Asad, you
22 moved to Fallujah, not for that situation, and had nothing to
23 do?

24 A. Had nothing to do.

01:19 25 MS. VORPAHL: Objection, your Honor. I'm going to

01:19 1 object that he is leading the witness.

2 THE COURT: I don't think he's leading. I'm going to
3 allow it.

4 BY MR. KELLY:

01:19 5 Q. How long were you at Fallujah?

6 A. I was at Fallujah about three weeks, and I had nothing to
7 do. And I kept telling my manager I had nothing to do, trying
8 to help the others. But it was a very small community. So,
9 there was a bus crash in Al Asad and the employee assistance
01:19 10 program team came through and they said that they had an
11 opening in Baghdad. So, the move from Fallujah to Baghdad was
12 actually my -- at my insistence so I would have something to
13 do. So, I moved to the employee assistance group for just a
14 couple of weeks, in Baghdad.

01:19 15 Q. When you got to Baghdad, is that where you worked at EAP?

16 A. For about three weeks, yes.

17 Q. Okay. And what did you do there?

18 A. I was still an admin there. And the manager came into the
19 office; and he was upset that I was going to be working in his
01:19 20 office, because he was used to having an office by himself.
21 So, he went in and threatened to quit; and then he turned in
22 his notice. And we were getting along great. It wasn't -- he
23 just wanted privacy with his family and everything on the
24 phone.

01:20 25 So, he came back in and said he had turned in his

01:20 1 notice and that it was going to be very uncomfortable for the
2 next 30 days so I should probably start looking for something
3 else if I didn't want to put up with it. So, I did. IT hired
4 me right away. It wasn't a problem.

01:20 5 Q. So, you went to work for IT. Who was your boss?

6 A. Billy Tompkins.

7 Q. We've heard reference to a Billy Tompkins in this case, who
8 was also Ms. Jones' boss back in 2005, as well. And what was
9 his position?

01:20 10 A. He was over all of IT for theater. He was the
11 IT co-manager, I think they he called him, but all theater, all
12 the sites.

13 Q. And, so, you would have started working for Billy Tompkins
14 when?

01:20 15 A. Probably -- again, my recollection of exact dates -- I
16 worked for EAP in February. I went on R&R, and I came back.
17 So, it would have been early March.

18 Q. Tell me how -- well, what happened when you were working in
19 IT with Billy Tompkins?

01:21 20 A. Within the first two days, Darren, my -- I was told to stay
21 with Darren, another male supervisor, and stay glued to his
22 side. And within just a few days, he asked me to run errands
23 with him to the other -- to the towers and to show me the base
24 and what was going on. And we stopped by his room to pick his
01:21 25 laundry up, which is very common, because we only had -- we had

01:21 1 to get our laundry in and out during the day.

2 And, so, we went in to grab his laundry; and
3 that's when he tried to kiss me. And I was like, "Oh, no, this
4 is not happening," because he was a supervisor and you can't
01:21 5 report it because, if you do, you'll -- I mean, it's very
6 intimidating.

7 And, so, I tried to talk to him a couple of times
8 and say stop; and he wouldn't. And then that's when the other
9 managers started kind of jumping in and Scott would come in and
01:21 10 grab his full erection in front of me and say, "You want some
11 of this, don't you," in front of the other supervisors and
12 managers.

13 Q. Was this in the office at IT?

14 A. This was in the office. This was in the office.

01:21 15 Q. And, so, Scott would actually have an erection and grab
16 it --

17 A. And say, "You want some of this, don't you?"

18 Q. And this is with Billy Tompkins and Darren and other
19 managers?

01:22 20 A. Billy Tompkins was in the office next door. He was aware
21 of it because I brought it and filled out reports to that
22 effect. But Saigh and Neal and Darren, all of -- they would
23 stand there and just kind of look and laugh.

24 Q. Let me ask you just a little bit about -- is Billy Tompkins
01:22 25 also called Willie Tompkins? Is it William Tompkins?

01:22 1 A. I think it's William something Tompkins, and we called him
2 Billy because -- that's just what they called him.

3 Q. We've heard testimony in this case about how cohabitation
4 was a terminable offense.

01:22 5 A. Yes.

6 Q. Do you know anything about Willie Tompkins with respect to
7 cohabitation?

8 A. Yes. He had a girlfriend, Julie -- I forget her -- she
9 used to be his admin, and they moved her into investor
01:22 10 relations or public relations, whatever, over there so that she
11 could be out from underneath him. She told me this and he told
12 me this, you know, that they had done that because he was her
13 boss and they were living together.

14 Q. They were living together in Baghdad?

01:23 15 A. In Baghdad.

16 Q. Did Willie Tompkins have a nickname?

17 A. Billy. I don't know any other.

18 Q. "Long Man" ring a bell?

19 A. No.

01:23 20 Q. Okay. Did something else happen with respect to Scott
21 Hickman?

22 A. He attacked five women all together. I knew all five
23 women -- well, the fifth -- okay. I was the third out of five.
24 But he attacked two Macedonia women, and then I was the third
01:23 25 one. And we were kind of all talking in the breezeway about

01:23 1 him pounding on our door, getting drunk and everything. But I
2 did not disclose to them that I had been raped. But they had
3 said that they had had to fight him off.

4 There was a fourth girl that I didn't know
01:23 5 anything about until the fifth girl, who was a really close
6 friend of mine, Melissa, was attacked. And she's the one that
7 finally called the MPs and got the MPs involved.

8 Q. I'll going to slow you down just a little bit,
9 Ms. Westcott. I know we had a hearing outside the presence of
01:24 10 the jury a few minutes ago, but I think this is the first time
11 they've heard you say you had been raped.

12 A. Yes, I was raped.

13 Q. So, if you would tell us about Scott Hickman and the rape.

14 A. Scott Hickman was another one of my supervisors, and we
01:24 15 worked on several projects together in the office. And he
16 would find his way to my room all the time, knocking, drunk,
17 crying, you know, "I need to talk."

18 I'm like, "You've got a bunch of people your
19 age" -- you know, because he was a lot younger. He was, like,
01:24 20 25; and I was 40, 41.

21 "You got plenty of women here that" -- because he
22 was, you know, a decent looking guy, you know, didn't have a
23 problem with women. And I said, "Why are you coming to me?" I
24 said, "I'm just here to work." I really had no interest
01:24 25 because he was just a baby, too, you know.

01:24 1 And he kept coming to my door and I kept
2 complaining and complaining and they didn't do anything about
3 it. And one night he came to my door and I opened it and he
4 came in and said he needed to talk about his uncle. And I was,
01:24 5 like, sound asleep. And I was, like, "You what," you know.

6 And the next thing you know he was on top of me;
7 and he raped me. And CID took the report the next day but --
8 not the next day. Six months later. But he -- yeah, he raped
9 me.

01:25 10 And I told two other coworkers that were not
11 managers that he had attacked me, but I was afraid to report it
12 to security because we knew very well that if we reported
13 sexual attacks, rapes, sexual harassment we were seen as the
14 problem, not the person doing it, and that we would be fired;
01:25 15 and I couldn't afford to lose my job at that time. And it was
16 very well known.

17 I mean, we lived in intimidation every day with
18 that. It was the boys will be boys club there, and he was one
19 of them. He and Billy Tompkins and Darren were best friends in
01:25 20 the States and here -- over there.

21 Q. You mentioned that you were the third of five women that he
22 had attacked. When you say "attacked," what do you mean with
23 respect to the other women?

24 A. Sexually attacked.

01:25 25 MS. VORPAHL: Your Honor, again, I object. This is

01:25 1 all hearsay testimony. She does not have personal knowledge of
2 anything other than what happened to her, and I object to this
3 entire line of questioning.

4 THE COURT: Your response?

01:26 5 MR. KELLY: Actually, your Honor, I can ask it in a
6 different way.

7 THE COURT: Okay. Let's do that.

8 BY MR. KELLY:

9 Q. When you came forward to report what had happened to you,
01:26 10 did the other women come forward, as well?

11 A. Yes. All -- I was told that all five women --

12 THE COURT: No, no. Who told you?

13 THE WITNESS: That all five women came forward?

14 THE COURT: Before we go into, what was said? Tell me
01:26 15 who said it.

16 THE WITNESS: I'm sorry. Who said what?

17 THE COURT: Well, you were about to say "all five
18 women." I'm just wondering --

19 THE WITNESS: Okay. Security approached me.

01:26 20 THE COURT: All right.

21 THE WITNESS: Tom Lynch approached me from security
22 and said, "We need you to participate because all five women
23 have -- the other four women have come forward."

24 And I was led to believe that they were all
01:26 25 cooperating with the CID. So, I cooperated. And come to find

01:26 1 out later, they had all backed out and they kept their jobs,
2 including Melissa Connor. And I lost mine.

3 BY MR. KELLY:

4 Q. Did you ever back off of your allegation?

01:26 5 A. No, not for a second.

6 Q. Now, I think you said you wait -- it was a few months
7 before you actually reported the rape to CID?

8 A. Correct. Because, again, I was afraid I would get -- every
9 time I would go on R&R and I came back, I would have to call
01:27 10 everyone in my office to find out is everything safe, you know,
11 has anyone found out, are they going to fire me. I mean, there
12 was always that fear that they would find out.

13 Q. I want to ask you just very briefly about -- you did file a
14 claim against KBR for what happened to you?

01:27 15 A. I did. And the claim was not so much for the rape, it was
16 for getting beaten up and abused by KBR after the incident.
17 The rape was nothing compared to what KBR did to me.

18 Q. Tell me about that. Tell me about the getting beaten up
19 and abused after the incident.

01:27 20 A. I -- when I finally started cooperating with the CID, the
21 CID would pull me into meetings several times a day. And it
22 was upsetting the top management, but they couldn't tell me --
23 I guess they could have, but they didn't tell me to stop. But
24 they kept telling me, you know, "This is cutting into your work
01:28 25 day," and making it very obvious that it wasn't behavior that

01:28 1 they wanted.

2 So, as I continued to cooperate with CID, I got
3 more pressure from some of the top management, direct comments
4 like, "Well, maybe you should go back to the United States,
01:28 5 maybe you shouldn't be on this project, maybe it's not for
6 you."

7 And I said, "No. I've been through enough. I'm
8 not going anywhere now that I've reported this."

9 And, so, then they said, "Well, we're going to
01:28 10 start moving you around."

11 And this one particular night, Jim Stapleton
12 called me into his office and he said, "We're going to start
13 moving you from camp to camp."

14 In the past people that get moved around camp to
01:28 15 camp, it's because they want you to quit. Because to get up
16 and move over there -- you don't have moving vans and stuff.
17 You have all your things in footlockers and it's a lot of
18 trouble to move. And especially when they say you're not going
19 to have a dedicated place to live, you're just going to float
01:29 20 around in Iraq. And as a female, that's very intimidating.

21 So, I -- I was like, "Okay. Well, I'm not
22 moving."

23 And they're, like, "Yeah, you're moving."

24 And, so, I -- they said I had to be out by that
01:29 25 night. They gave me just a couple of hours to get my stuff

01:29 1 packed, someplace that I had lived for, what? For six, almost
2 eight months.

3 And, so, I went back to my room. And I went to
4 the medic, and I got a sick slip for the next day -- next day
01:29 5 and I -- that's the day that I was supposed to be off, and
6 that's when they came in the next day.

7 But that night at about -- I don't know what time
8 it was. It was pitch black. Someone knocked on my door. And
9 at KBR we were mandated, we had to answer the door because it
01:29 10 could be security, it could be anybody. And we didn't have
11 windows to look out and it was pitch black.

12 So, again, I opened the door. And the next thing
13 I know, I was being thrown around the room. I was thrown five
14 times by someone that was male. I could feel him, and he was
01:30 15 kind of -- he wasn't saying anything. He was just throwing me
16 around the room.

17 And I hit -- I was passed out, I think, for a
18 little while. And then that's when I -- I was, like, okay --
19 you know, because I wasn't going into work the next day. So --
01:30 20 Q. Right. So, your crime at this point had been reporting the
21 rape?

22 A. Correct. Correct.

23 Q. Ultimately, were you terminated from KBR?

24 A. Yes, I was.

01:30 25 Q. Tell us about that.

01:30 1 A. The day that I took a sick day, I was in my room and I was
2 sleeping. And HR was knocking on my door; and I said, "I have
3 a sick slip from the medic, John Hatzimichaels," the paramedic
4 there. "I have a sick slip. You know, I don't need to go to
01:30 5 work today."

6 They said, "You need to be in work."

7 And I said, "No. I'm on a sick day. I have a
8 sick slip."

9 And they said, "HR wants you in the office
01:30 10 immediately."

11 So, I got dressed; and I went there. And no one
12 had -- they didn't have paper or anything. They were just --
13 there were five people just sitting around me, staring at me.
14 And some were secretaries, and some were managers. And I was
01:31 15 like, "What's going on?"

16 And they started asking me questions. And I
17 don't even remember what they were asking me; but they said,
18 "We need you to come in to this other room."

19 So, I got up to walk. And they said, "Oh, you
01:31 20 stumbled. You stumbled."

21 And they rushed me to the medics and took a drug
22 screen test on me. And they didn't say anything about the
23 bruises that I had from head to toe. They said, "Did you
24 fall?"

01:31 25 I said, "No, I didn't." I said -- I mean, I had

01:31 1 bruises inside and out. There's no way that a fall could have
2 caused those bruises.

3 So, they started trying to say that I had fallen.
4 And I said, "No, I didn't."

01:31 5 So, the military kept asking me if anybody was
6 abusing me or beating me up. And at that point I had to say no
7 because I was scared to death at that point. I didn't know
8 what to do. I mean, when I got beaten up, I was like, "What
9 are they going to do next?"

01:31 10 And it was the next day that they put me on a
11 plane and sent me home.

12 Q. And that was for what? What did they tell you it was for?

13 A. Well, they didn't tell me. They just put me on a plane at
14 the time. But after I got back to the States, I contacted HR
01:31 15 and I said, "What's the reason?"

16 They wouldn't tell me. So, I had to contact CID.
17 And CID got the report that said it was illegal substance abuse
18 because I had Valium -- I had taken a Valium after I got beaten
19 up.

01:32 20 Q. Did you have a prescription for the Valium?

21 A. Yes, I did.

22 Q. Did you show the prescription to --

23 A. Yes, I did.

24 Q. Did you ultimately file a claim against KBR?

01:32 25 A. Yes, I did.

01:32

1 Q. And did that claim get resolved?

2 A. Yes, it did.

3 Q. In what forum did it get resolved?

4 A. We went through arbitration; and we came to an agreement, a
5 settlement, from KBR.

6 Q. Without telling us what that agreement or settlement was,
7 were you bound to confidentiality through the arbitration
8 provision?

9 A. Yes, except for subpoena and -- what's listed in here.

10 Q. Okay. And you're testifying here today under subpoena?

11 A. That's correct.

12 Q. You're testifying at my request?

13 A. Yes, I am.

14 Q. Okay. And I do represent you in an unrelated matter?

15 A. Yes, you do.

16 MR. KELLY: Pass the witness, your Honor.

17 THE COURT: Very well.

18 **CROSS-EXAMINATION**

19 BY MS. VORPAHL:

20 Q. Ms. Westcott, my name is Joanne Vorpahl. We met just a few
21 minutes ago, before the jury came in. Isn't that right?

22 A. Yes, ma'am.

23 Q. I may take this a little bit out of order.

24 On March the 20th of 2007, you filed your charge
25 of discrimination with the EEOC. Is that right?

01:33 1 A. The best I can recall.

2 Q. Okay. I'm looking for that charge now. Well, I'll find
3 that, and I'll come back to it.

4 You settled your dispute with KBR on April the
01:33 5 20th of 2007. Is that right?

6 A. Yes, ma'am.

7 Q. Okay. And if you'll read for the jury what your agreement
8 says with regard to confidentiality, what your lawyer just
9 asked you about, read that paragraph.

01:34 10 A. Paragraph 5?

11 Q. Yes, ma'am. I think that was it. And I'm sorry I'm having
12 a hard time here.

13 THE WITNESS: If I read this kind of fast, can she
14 keep up?

01:34 15 THE COURT: You have to read slow. I know it's very
16 hard to do.

17 THE WITNESS: Okay. All right.

18 A. "Number 5, The terms and conditions of this agreement shall
19 be maintained by Ms. Westcott in strict confidence.

01:34 20 Ms. Westcott agrees that she will not disclose, directly or
21 indirectly, the terms of the agreement or any communications,
22 written, verbal or otherwise, constituting or concerning the
23 negotiation of this agreement to any person outside her
24 immediate family, attorneys, accountants, auditors, financial
01:34 25 or tax advisers and only on the condition that they agree to

01:35 1 the terms of this agreement, confidential, including, but not
2 limited to, any former or current employee of KBR or any of its
3 parents or subsidiaries.

01:35 4 "From the date of this agreement forward, in the
5 event Ms. Westcott is asked about the status of any dispute
6 with the company, she may reply with the words, or words to the
7 same effect, 'The matter is settled and nothing more can be
8 said,' but will not otherwise indicate the terms of the
9 settlement, including the amount paid, unless required by
01:35 10 subpoena, court order, administrative order, or otherwise
11 required by law.

12 "Nothing in this agreement is intended to prevent
13 Ms. Westcott from cooperating fully in any investigation
14 brought by the Justice Department" --

01:35 15 THE COURT: Slow down. "Any investigation brought
16 by."

17 A. -- "any investigation brought by the Justice Department or
18 any government agency."

19 BY MS. VORPAHL:

01:35 20 Q. Okay. So, you filed your charge of discrimination in March
21 of 2007. You settled in mediation in April of 2007, to the
22 day, one month later. Isn't that right?

23 A. Yes, ma'am.

24 Q. Okay. And you invoked KBR's dispute resolution procedure.

01:36 25 Isn't that right? To effect the mediation.

01:36 1 A. Correct, as mandated by them. That's the only path I could
2 take.

3 Q. Okay. Well, didn't the EEOC tell you that you could also
4 mediate it through the EEOC?

01:36 5 A. I didn't seem to have that option. It wasn't my
6 understanding.

7 Q. All right. But you were represented by counsel at that
8 time?

9 A. I was.

01:36 10 Q. Okay. And you were certainly able to file an EEOC charge,
11 which is a charge with a government agency. Isn't that right?

12 A. Yes.

13 Q. And that agency, had you -- had you not chosen to resolve
14 your dispute, would have investigated the dispute. Is that
01:36 15 correct?

16 A. At some point, yes, they would.

17 Q. Okay. Now, let's go back to your employment with KBR. You
18 began working for KBR in October of 2005. Is that right?

19 A. Yes, ma'am.

01:37 20 Q. And the first person that you complained about is Matt.
21 What's Matt's last name?

22 A. I don't recall. I mean -- I don't recall.

23 Q. He was your former boyfriend, though?

24 A. No.

01:37 25 Q. You had not had a relationship with Matt prior to --

01:37 1 A. I knew his --

2 Q. -- his hiring you?

3 A. I knew him in Houston, but we didn't have a relationship.

4 Q. All right. So, he was -- he was a friend of yours and

01:37 5 nothing more --

6 A. A friend, correct.

7 Q. -- in Houston?

8 A. Correct.

9 Q. All right. And he hired you at KBR to go to Iraq?

01:37 10 A. I wouldn't say he had the determination of hiring me, but

11 he did put my résumé in.

12 Q. And it's your sworn testimony that you never complained to

13 anyone that he treated you like you were still dating?

14 A. That's not my testimony.

01:37 15 Q. So, it's your sworn testimony that he did not -- that you

16 didn't make that comment to anyone?

17 A. I'm sorry. Rephrase the question you're asking me.

18 Q. Yes. If I say to you that I believe that you complained to

19 people that he treated you -- that Matt treated you as though

01:38 20 you were still dating, are you telling me that that is an

21 inaccurate statement?

22 A. No, that's an accurate statement. I had complained to

23 people there that he treated me as if we were dating. But I

24 never dated him. We were friends.

01:38 25 Q. You did not date him before you --

01:38

1 A. I did not.

2 Q. -- before you came to Iraq?

3 All right. You made that complaint. Is that
4 right?

01:38

5 A. To the coworkers.

6 Q. All right. Well, eventually you spoke to Terrence Copling,
7 who was theater director for HR or ER, right?8 A. I spoke to him, but it was not a formal complaint. It was
9 just a -- pretty confidential between he and I, that we were

01:38

10 having a discussion, because I did not open a complaint against
11 Matt.12 Q. You didn't -- you're saying you didn't make a written
13 complaint?

14 A. I didn't open a case. So, it really doesn't go on file.

01:38

15 It's just -- I mean, ER and any kind of employee relations,
16 employee assistance program, what you share with them, unless
17 you agree to put it in writing, it's just like talking to your
18 psychiatrist or something. It's not --

19 Q. All right. So, the EAP assures confidentiality?

01:39

20 A. Correct.

21 Q. And you were given that confidentiality on that occasion?

22 A. Correct.

23 Q. And you were not terminated from your job with KBR?

24 A. Correct, because I did not make a complaint.

01:39

25 Q. Okay. Well, we don't know what would have happened if you

01:39 1 had made a complaint, do we?

2 A. Yes, I do. I was fired for being raped.

3 Q. We'll get there. We'll get there.

4 Then you also -- then you were moved, and you
01:39 5 made a complaint about Darren Peterson. Is that right?

6 A. That's correct.

7 Q. And when you told -- when you complained about Darren
8 Peterson, your primary complaint was something with regard to
9 computers that he had access to and that you felt that he was
01:39 10 doing something wrong with?

11 A. No. That was not my initial complaint.

12 Q. What was your initial complaint with regard to --

13 A. That he took me to his room on the premises of picking up
14 his laundry and he tried to kiss me and started pressuring me
01:40 15 about not spending time with him and why was I going to spend
16 time with other people and not spending time with him.

17 THE COURT: Slow down.

18 THE WITNESS: Sorry.

19 A. And I had no interest in him. He was a supervisor.

01:40 20 BY MS. VORPAHL

21 Q. So, again, you brought these complaints to Terrence
22 Copling?

23 A. No. Terrence Copling was out of the picture when I moved
24 to Baghdad.

01:40 25 Q. All right. I'm sorry. That was to Dave Ford. Is that

01:40

1 right? That you made that complaint.

2 A. Yes, I did. I did go to Dave Ford.

3 Q. Actually, Dave Ford came to you when he heard that you had
4 had some concerns about Darren Peterson. Isn't that right?

01:40

5 A. No, he did not.

6 Q. All right.

7 A. I came to him, and he asked me when I walked in the door --
8 well, I can go into detail.

9 He looked at me like, "Oh, God, you're here."

01:41

10 And he said, "Well," he said, "fill out this paperwork," my
11 name, my employee number, everything.

12 And I'm like, "I've given that all to you. Let's
13 talk about what's going on."

14 And he had been traveling, and he was exhausted.

01:41

15 And he just looked at me, he's like, "Have you had this problem
16 before? Is this an ongoing problem with you?"

17 He just made it sound like I was just being a
18 pain. So, I left. I didn't even finish the complaint with
19 him.

01:41

20 Q. And, again, though, you kept your job at KBR?

21 A. Yeah, because no formal complaint was made.

22 Q. All right. And you chose not to initiate a formal
23 complaint?

24 A. Because they weren't going to do anything about it.

01:41

25 Q. But your complaint would have been that Darren Peterson

01:41 1 tried to kiss you?

2 A. Well, he was coming on to me. He wasn't -- he pulled up
3 against me with an erection and he was in his room and I was
4 trying to get away and I told Billy Tompkins that I didn't feel
01:41 5 comfortable with it and Billy Tompkins wouldn't do anything
6 about it.

7 Q. All right. So, did you -- but you didn't file any formal
8 complaint?

9 A. I did at -- I don't know the timeline. It's been a long
01:42 10 time. Because I -- I didn't know I was going to be answering
11 all these details about my case, and that's been several years.

12 Q. Sure.

13 A. So, I don't have -- I mean, I let go of that a long time
14 ago. I was here to tell facts about, you know, my employers
01:42 15 and stuff. I don't remember all my dates, but I did at some
16 point -- I have somewhere all the security reports that I filed
17 about each and every -- about Saigh, about Darren, about Billy
18 Tompkins, about Scott Hickman, just the everyday harassment
19 that I was getting. And I would sit at my desk just like, "You
01:42 20 guys, come on," you know. I mean, it was fun to them, it was a
21 sport.

22 Q. You were never at Camp Hope. Is that right?

23 A. No, I didn't work there.

24 Q. All right. And you never visited there?

01:43 25 A. I did visit there, but I'm trying to remember if it was

01:43 1 while I was with KBR. I mean, I've been there several times,
2 but I don't know if I was with KBR. I don't remember.

3 Q. All right. So, you've worked for other contractors
4 overseas, as well?

01:43 5 A. Yes, I have.

6 Q. Both before and after you worked for KBR?

7 A. No. Only after KBR.

8 Q. Okay. And Mr. Kelly represents you now in some other
9 matter?

01:43 10 A. Correct.

11 Q. And he asked you to come and testify?

12 A. Correct.

13 Q. You know that Scott Hickman was terminated before you
14 made -- before you came and told anyone what you alleged
01:43 15 happened to you?

16 A. No. He was terminated after.

17 Q. Ma'am, he was terminated on September 4th of 2006. And you
18 made your complaint for the first time on September 5th of
19 2006. Isn't that correct?

01:43 20 A. He was still there after I made my complaint. He was still
21 there. As a matter of fact, we all went on lockdown one night
22 because he was allowed to go to the airport when he was
23 terminated and he was allowed to go on his own accord with no
24 security or anything. And security came to our barracks, to
01:44 25 our hooches, and told all the women to stay in the room, stay

01:44 1 locked in our room because he was out. They didn't know where
2 he was. He missed his flight. They had to go -- they had to
3 hunt for him and find him.

4 So, he, in fact, was loose and was fired after my
01:44 5 incident. Because I cooperated with CID, and he was still
6 there.

7 Q. I certainly agree that he was fired after your incident.
8 But he was fired before you made the report of your incident.

9 A. No, ma'am. No, ma'am.

01:44 10 Q. Well, I believe that the facts are otherwise.

11 Let me ask you this. You've talked a lot about
12 CID and CID saying, "We're going to move you and you won't have
13 a dedicated place to live" --

14 A. That wasn't CID. That was top five management. That was
01:44 15 KBR moving me around.

16 CID was investigating, trying to get all the
17 facts from me about everything going on. And KBR did not want
18 me cooperating with the CID.

19 Q. So, you made a claim to Army Criminal Investigation
01:44 20 Division and not to KBR?

21 A. No. They came to me after the fifth girl was attacked.
22 She called the MPs when he stripped her shirt off and tried
23 raping her. She called -- she got to the phone and called the
24 MPs. Only then did CID get involved and KBR do anything about
01:45 25 the situation.

01:45

1 Q. And who was that person?

2 A. That was Melissa Connor.

3 Q. And you did not make -- you did not tell anyone at KBR --

4 A. Yes, I did.

01:45

5 Q. -- about your allegations of rape until after Melissa
6 Connor came forward, did you?7 A. Yes, I did tell people there. I didn't make a formal
8 complaint, though.

9 Q. But you didn't tell anyone in human resources, did you?

01:45

10 A. James Video, yes, I did.

11 Q. When did you tell him?

12 A. I told him that he was in my room -- actually, we had some
13 video on. We were all sitting around, kind of hanging out; and
14 he was there. And I said, "You know that that went down."

01:45

15 And he goes, "Yeah." And he said, "Well, until
16 you make a formal complaint, it's not a complaint."

17 But he was in HR, and he did know about it.

18 Q. And you told him, "You know that went down"?

19 A. Yeah. He was there when Scott would grab himself with a
20 full erection in the office, as well.

01:45

21 THE COURT: CID is part of the army, right?

22 THE WITNESS: Yes, sir, Criminal Investigation
23 Division.

24 BY MS. VORPAHL:

01:46

25 Q. You don't know Charles Bortz?

01:46

1 A. No, ma'am, I don't.

2 Q. You don't know Jamie Jones?

3 A. I knew who she was, but I don't know her.

4 Q. How did you know who she was?

01:46

5 A. Because I was in IT. I worked for the same people that
6 knew her and what had happened. I mean, it's a very small
7 community there. Just because you're on a different base, it's
8 2 miles away from where I lived.

01:46

9 Q. All right. Well, you have no personal information, no
10 personal knowledge of anything having to do with Jamie Jones'
11 employment at KBR, do you?

12 A. When you say "personal knowledge" --

13 Q. Something you saw, heard, smelled, felt, something that you
14 yourself --

01:46

15 A. Heard, I mean, I'm just saying --

16 Q. Okay. Well, no, I don't want something that someone told
17 you.

18 A. Okay.

19 Q. But something that you personally experienced.

01:47

20 A. That's correct, I don't know her.

21 Q. You don't have any such knowledge.

22 Now, you signed an employment agreement when you
23 started with KBR in October of 2005. Isn't that right?

24 A. That's correct.

01:47

25 Q. And you also read and signed KBR's Code of Business

01:47 1 Conduct, right?

2 A. Yes.

3 Q. You received this brochure?

4 A. As did all managers, yes.

01:47 5 Q. All right. You went through the week-long training at

6 Greenspoint, I assume?

7 A. Yes.

8 Q. All right. And you were -- you attended the presentation

9 on employment issues and -- including harassment and

01:47 10 discrimination, right?

11 A. Yes.

12 Q. All right. And you knew from attending that and from

13 reading this brochure that incidents of harassment are required

14 to be reported, correct?

01:47 15 A. That's correct.

16 Q. All right. Yet, you did not report the incidents of

17 harassment that you've described for us, promptly?

18 A. Would you please define "report"? Because I did tell

19 people about it, and they were managers.

01:48 20 Q. All right. You did not report to your manager or to your

21 manager's manager, you did not use the chain of command that is

22 described in the literature, right?

23 A. Correct.

24 Q. All right. And you did not go to human resources until the

01:48 25 times that we've talked about, right?

01:48 1 A. Right, due to intimidation and the fear that I would be
2 fired.

3 Q. All right. And, so, during your employment, you were
4 familiar with KBR's policies, including its employment
01:48 5 policies?

6 A. Yes.

7 Q. And you knew that employees could be terminated for
8 violating KBR's policies. Is that right?

9 A. Yes.

01:48 10 Q. Okay. And you knew that KBR had --

11 THE COURT: Let me slow you down a little bit, too,
12 Ms. Vorpahl.

13 MS. VORPAHL: Thank you, Judge.

14 BY MS. VORPAHL:

01:48 15 Q. And you knew that KBR had a policy regarding unauthorized
16 medication use. Is that right?

17 A. KBR did, yes.

18 Q. Yes. Okay. And that was one of the things that had been
19 covered with you during the two weeks of training or the
01:48 20 weeks -- the week of training -- excuse me -- at Greenspoint?

21 A. That was authorized, because I did sign on my file that I
22 was taking those medications.

23 Q. Okay. Well, let me show you the unauthorized medication
24 use, if I could, please, the policy, please.

01:49 25 And I've specifically flagged one provision

01:49 1 that -- and I'll take this little sticky off here. And you're
2 welcome to read that whole policy if you would like to.

3 A. Sure.

4 Q. But that policy certainly requires that you disclose to KBR
01:49 5 any medications that you are taking. Is that right?

6 A. And I did. Yes.

7 Q. Now, on September 21 of 2006, you went in to work and,
8 according to Debbie Lee, Valdeta Jacobs, and Lee O'Shea in
9 Mr. Redosa's office, you appeared to be incoherent and high.

01:49 10 A. When you say I went in to work, are you talking about the
11 day they pulled me out of my room, that I was on sick leave?
12 And I was not working that day. I was on sick leave. I had
13 taken medication to sleep because I had just been beaten up.

14 So, yes, I was in my room asleep and Jim Redosa
01:50 15 had someone come get me out of my room and bring me in his
16 office.

17 Q. And the medication that you had taken was both Phenergan
18 and Vicodin. Is that right? Or Phenergan -- I'm sorry.

19 A. I didn't have Vicodin.

01:50 20 Q. Okay. It was Phenergan and Valium. Is that right?

21 A. Valium. Not Phenergan.

22 Q. Okay.

23 A. It was Valium. Not Phenergan.

24 Q. So, it's your sworn testimony that it was only Valium?

01:50 25 A. I think so. I mean, that's all I remember -- that's all I

01:50 1 recall.

2 Q. All right. And it's not Valium that was prescribed to you
3 by --

4 A. Yes, it was. I had the prescription bottle. It was Valium
01:50 5 prescribed to me by a doctor, in my name.

6 Q. So, it's your sworn testimony that you were just terminated
7 for taking a Valium that had been prescribed to you the night
8 before?

9 A. No. That's not -- they just said "illegal substance
01:50 10 abuse." But that's not illegal because it was disclosed on my
11 file that I was taking Valium and that I was taking Ambien and
12 I signed off on my actual employment folder, on the front.
13 Because when we went through the medics, they said, "Oh, you
14 can't" --

01:51 15 And I said, "Well, I have it."

16 And they said, "Okay. Well, sign here."

17 And I put my initials on that folder.

18 Q. And, so, it's your --

19 A. The medics.

01:51 20 Q. So, it's your testimony that KBR just terminated you,
21 notwithstanding the fact that you said, "Oh, I do have
22 permission to have this substance," and it was only Valium?

23 A. They didn't discuss anything with me. They just put me on
24 a plane. I was at the medics all day, from that morning, with
01:51 25 the military examining me the entire day, taking pictures of

01:51 1 all the bruising from head to toe from the beating the night
2 before.

3 Q. When you started working for KBR in October of 2005, you
4 were making about \$2,600 a month. Do you recall that?

01:52 5 A. That sounds about right.

6 Q. You received a raise in January of 2006 and your salary was
7 increased to between 3,000 and 3,100 dollars a month. Is that
8 right?

9 A. That sounds about right.

01:52 10 Q. Okay. And you received another raise in March of 2006.
11 Your salary went up about another 250 or 300 dollars. Is that
12 correct?

13 A. That's correct. I was doing a good job.

14 Q. Yes. You were being recognized for it. Is that correct?

01:52 15 A. Yes.

16 Q. You were being promoted?

17 A. Yes.

18 Q. All right. And you said you've indicated that you suffered
19 this physical assault, what? The day before you were
01:53 20 terminated?

21 A. That's correct, the night before.

22 Q. Okay. You don't know who it was that assaulted you?

23 A. I have no idea.

24 Q. Okay.

01:53 25 A. I never saw his face, and he didn't really say anything.

01:53 1 Q. Well, when did you report that?

2 A. When I was in the hospital that next day, when they took me
3 to the medic because they said I stumbled. They didn't take me
4 to the medic because I was bruised from head to toe.

01:53 5 I mean, I had bruises on my face, on my arms. It
6 was only the military medics that said, "Are you being abused?
7 Why do you have all these bruises" you know.

8 And I was scared to death. I just knew that I
9 wanted to leave. I mean, I just wanted to get out of there.

01:53 10 Q. And you're sure that that's not because you had had too
11 much to drink and had stumbled and fallen in your room the
12 night before?

13 A. I had no alcohol in me. There was no alcohol in my room I
14 don't know why the issue of alcohol was even coming up.

01:53 15 Q. Didn't you tell your coworkers that you had fallen the
16 night before and that is why you had the bruises?

17 A. I don't really recall who I told what at that point. I was
18 so dazed from being beaten up and pulled out of my room on a
19 day that I had sick leave and HR pushing me here, taking me
01:54 20 there. You know, there was really no concern for me. It was
21 all about, "Let's -- what can we gig her on?" But that's the
22 way KBR is.

23 MS. VORPAHL: May I approach the witness?

24 THE COURT: You may.

01:54 25 BY MS. VORPAHL:

01:54 1 Q. Ms. Westcott, I want to show you -- and I have,
2 unfortunately, only one copy of this -- the form that was
3 completed by the medic at KBR when you came in for treatment.
4 Okay?

01:54 5 A. Uh-huh.

6 Q. And please take all the time that you need to, to read
7 this.

8 My question is going to be, didn't you deny abuse
9 and indicate that the bruises were from you falling in your
01:55 10 room.

11 A. I don't remember saying that, and they were not from me
12 falling. If I did say that, it was because I was afraid to
13 report to them what was really going on. If you had just been
14 beaten up after you were raped, you know, reported a rape -- I
01:55 15 was scared to death of them. Why would I trust KBR with any
16 information on me?

17 This is KBR's information. This is not what I
18 gave to the medics and the military. This KBR's medic. I
19 didn't trust KBR at all at that point. So, I have no idea. I
01:55 20 don't think I denied it.

21 Q. Well, read what it says.

22 MR. KELLY: Your Honor --

23 A. What do you want me to read?

24 MR. KELLY: Hold on for a second.

01:55 25 This is hearsay, your Honor. It's never been

01:55 1 produced to me at all. So, to read it into the record, I think
2 is prejudicial. To read it privately is fine, but to read
3 KBR's record into the record of this trial that they have never
4 produced --

01:55 5 THE COURT: I don't know what the document is, but you
6 need to authenticate it if you're going to offer it.

7 BY MS. VORPAHL:

8 Q. Isn't it, in fact, a record of your appearance at the
9 medical clinic?

01:56 10 A. It's what KBR says.

11 Q. Yes, that's right. And among the things that they say are
12 that you denied any abuse and said that you had fallen in your
13 room.

14 A. I deny that.

01:56 15 Q. Yes, but isn't that what the record says?

16 A. That's what their record says.

17 Q. All right.

18 A. But it's not true.

19 Is there a military record of what was said to
01:56 20 the military?

21 Q. Ma'am, I don't know.

22 A. Because that's where I spent the whole day. I didn't even
23 see the medic that day, the KBR medic. So, why a KBR medic
24 would have a report on me, I don't know. Because I was at the
01:56 25 military medic all day, which is complete separate from KBR.

01:56 1 Q. I'm not sure why the KBR people would have a record either
2 unless you had been there to see them.

3 A. And they could have included the military record, as well.
4 If they wanted it to be an authentic record, KBR could have
01:56 5 included the military record along with their record.

6 Q. All right. Your chief complaint when you went in to KBR's
7 medic was malaise. Is that right?

8 A. I didn't have any complaints. They yanked me out of my
9 room and dragged me to the medic, to the military. They
01:57 10 came --

11 Q. And that's because you appeared to be under the influence
12 of drugs.

13 A. I had taken a Valium, yes, because I had been beaten the
14 night before.

01:57 15 MS. VORPAHL: I'll pass the witness, your Honor.

16 THE COURT: Any inquiry, Mr. McKinney?

17 MR. MCKINNEY: I don't think so, your Honor.

18 THE COURT: Any redirect?

19 MR. KELLY: No, your Honor.

01:57 20 THE COURT: You're free to go. Thank you very much.

21 Safe travels.

22 MR. KELLY: Call Anna Mayo, your Honor.

23 MS. VORPAHL: Your Honor, may we approach?

24 THE COURT: Okay. I tell you what we're going to do
01:57 25 this time. Let's see if we can go around this way, and we'll

01:57 1 be on this side of the court reporter.

2 (At sidebar with all counsel)

3 MS. VORPAHL: I think we're going to have to ask the
4 jury to step out. This is another witness. This witness did
01:58 5 not begin working for KBR until October of 2008. She was never
6 at Camp Hope. She was about 50 miles from the Green Zone.

7 MR. KELLY: I'll save you some words. This witness is
8 called, your Honor, with respect to punitive damages. At this
9 point in time this case has not been bifurcated. I will
01:58 10 represent to the Court that I think it would be probably the
11 best time to call her now. She's here from Austin. She's
12 here. She's pregnant. I would like to get her testimony on.

13 THE COURT: What's the testimony about?

14 MR. KELLY: The continuing abuses of women even as
01:59 15 late as November, 2009, and the fact that this environment
16 still persists. This is the last witness plaintiffs intend to
17 call. And if we're -- my intention is to call her ten minutes
18 maybe and then rest.

19 MS. VORPAHL: Her allegations are that she had
01:59 20 something happen to her at the hands of a non-KBR employee.

21 MR. KELLY: That's incorrect. Is this --

22 MR. RUNIONS: That's exactly correct.

23 MS. VORPAHL: That's exactly right.

24 THE COURT: We'll take her on voir dire.

01:59 25 MS. VORPAHL: Okay. Thank you.

01:59

1 (In open court)

2 THE COURT: Ladies and gentlemen, I know you're not
3 ready for another break; but we need to take one.

4 Would all please rise for the jury?

01:59

5 (Jury not present)

6 THE COURT: All right. Please be seated.

7 MR. ESTEFAN: Your Honor, shall I get the witness?

8 THE COURT: If you would, please.

9 (Witness being summoned to the stand)

02:00

10 THE COURT: Good afternoon, ma'am. If you make your
11 way up here, we've got a special seat reserved for you. Be
12 seated in this seat right here.13 And before you take your seat, Mrs. Loewe will
14 administer the oath. If you raise your right hand, please.

02:01

15 THE CASE MANAGER: Do you solemnly swear the testimony
16 you're about to give in the matter now before the Court will be
17 the truth, the whole truth and nothing but the truth?

18 THE WITNESS: I do.

19 THE COURT: Okay. Please have a seat. Try to speak
02:01 20 directly into the mic, if you would. I think Ms. Vorpahl, who
21 represents KBR, has some questions for you.

22 MS. VORPAHL: Thank you, your Honor.

23 **ANNA MAYO, DULY SWORN, TESTIFIED:**24 **VOIR DIRE EXAMINATION**

02:01

25 BY MS. VORPAHL:

02:01 1 Q. Ma'am, my name is Joanne Vorpahl. You and I have never met
2 before, have we?

3 A. No, ma'am.

4 Q. Okay. I do have some questions to ask you.

02:01 5 You started working for KBR in October of 2008.
6 Is that right?

7 A. Correct.

8 Q. And you never worked at Camp Hope, did you?

9 A. No, ma'am.

02:01 10 Q. Where did you work?

11 A. Joint Base Balad.

12 Q. And that was --

13 THE COURT: Where did you work?

14 THE WITNESS: Joint Base Balad.

02:01 15 THE COURT: Joint Base -- okay.

16 BY MS. VORPAHL"

17 Q. B-A-L-A-D. Joint Air Base Balad. Is that right?

18 A. Yes, ma'am.

19 Q. That was about 50 miles from the Green Zone?

02:02 20 A. Yes, ma'am.

21 Q. Okay. You have filed a lawsuit against KBR. Is that
22 right?

23 A. Yes, ma'am.

24 Q. You have not filed a charge of discrimination against KBR,
02:02 25 correct? With the Equal Employment Opportunity Commission?

02:02 1 THE COURT: That's separate from a lawsuit, normally
2 precedes a lawsuit; that is, a complaint with the Equal
3 Employment Opportunity Commission?

4 THE WITNESS: No, sir.

02:02 5 THE COURT: As far as you know, you haven't filed one
6 there?

7 THE WITNESS: No, sir.

8 THE COURT: Is your complaint about being
9 discriminated against as a woman or a religious minority or
02:02 10 something like that?

11 THE WITNESS: No, sir.

12 THE COURT: What's the nature of your complaint?

13 THE WITNESS: I was raped at --

14 THE COURT: So, was that as an outgrowth of a policy
02:02 15 of sexual harassment?

16 THE WITNESS: Yes.

17 THE COURT: All right.

18 BY MS. VORPAHL:

19 Q. But there has been no charge filed with the EEOC, to your
02:02 20 knowledge?

21 A. No, ma'am.

22 Q. Okay. Now, you claim that you were raped by an Indian -- a
23 person of Indian descent. Is that correct?

24 A. That's correct.

02:03 25 Q. And he was a subcontractor of KBR. Is that right?

02:03

1 A. To my knowledge, yes.

2 Q. Again, you never worked in the Green Zone or at Camp Hope.
3 Is that right?

4 A. That's right.

02:03

5 Q. All right. And the date on which you have alleged in your
6 lawsuit that this attack by the Indian person, who was a
7 subcontractor, was what date?

8 A. November 30th, 2009.

9 Q. Yes, November 30th of 2009.

02:03

10 Do you know Charles Bortz?

11 A. No, ma'am.

12 Q. Do you know Jamie Leigh Jones?

13 A. I do.

14 Q. How do you know her?

02:04

15 A. We have the same lawyer.

16 Q. All right. That's how you know her, is that you are both
17 represented by Todd Kelly?

18 A. That's correct.

19 Q. Okay. Have you been subpoenaed to testify here today or
20 have you come voluntarily?

02:04

21 A. Voluntarily.

22 Q. You've come voluntarily. And is that at Mr. Kelly's
23 suggestion?

24 A. Yes.

02:04

25 Q. You've not made a claim for sexual harassment, have you?

02:04

1 A. No.

2 Q. You've not made a claim for retaliation, have you?

3 A. No.

4 THE COURT: Who is your lawsuit against?

02:04

5 THE WITNESS: KBR.

6 THE COURT: And your belief is that KBR did not do
7 enough to protect you from your -- from the predator?

8 THE WITNESS: Correct.

9 THE COURT: Okay.

02:04

10 BY MS. VORPAHL:

11 Q. You don't claim that you were ever locked in a container by
12 any KBR employee, do you?

13 A. No.

14 Q. You don't claim that you were fraudulently induced to enter
15 into an employment agreement with KBR, do you?

02:04

16 A. No.

17 Q. You don't claim -- your claim is that you were assaulted by
18 a subcontractor for an outfit called Kulak. Is that right?

19 A. That's correct.

02:05

20 Q. And he was a third-country national subcontractor. Is that
21 correct?

22 A. Yes.

23 Q. The criminal investigation of your case is still pending?

24 A. Correct.

02:05

25 Q. Your lawsuit was filed in June of 2010. Is that right?

02:05

1 A. That is correct.

2 Q. And it has not been decided?

3 A. No.

02:05

4 THE COURT: Where was it filed? In Houston or in
5 Austin?

6 THE WITNESS: In Houston.

7 BY MS. VORPAHL:

02:05

8 Q. The documents related to the investigation that the
9 government did, have not been released yet by the government,
10 have they?

11 A. No, ma'am.

12 Q. As soon as KBR became aware of your situation, KBR
13 responded. Isn't that right?

14 A. They were the medics, correct.

02:06

15 Q. Yes. KBR's security manager Brian Barr and Bill Bass
16 actually found you. Is that right?

17 A. I wasn't aware that Brian Barr, but it was Bill Bass.

18 Q. Who was a KBR employee?

19 A. Correct.

02:06

20 Q. All right. You were taken in a KBR ambulance to the
21 military hospital for treatment?

22 A. I was.

23 Q. Several KBR managers and employees visited you at the
24 hospital because they were concerned about your wellbeing?

02:06

25 A. They were, yes.

02:06 1 Q. You were then flown to Germany for further treatment?

2 A. Yes.

3 Q. From Germany you were flown back to the United States?

4 A. Yes.

02:06 5 Q. You don't claim that KBR imprisoned you?

6 A. No.

7 Q. You don't claim that KBR held you against your will?

8 A. No.

02:06 9 Q. You don't claim that KBR fired you for reporting the
10 alleged rape?

11 A. No.

12 Q. You don't claim that -- or rather, strike that.

13 KBR did report your injuries to its worker's
14 compensation carrier?

02:07 15 A. Correct.

16 Q. And you began receiving benefits after you returned to the
17 United States?

18 A. Correct.

02:07 19 THE COURT: Did the assault against you, ma'am, did it
20 take place on KBR property?

21 THE WITNESS: Yes, sir. It happened in my living --
22 in my sleeping facility, in my CHU -- it's called a CHU --
23 while I was sleeping.

02:07 24 THE COURT: And how did the contractor happen to be
25 there at that hour? Was he also housed in the same premises?

02:07 1 THE WITNESS: Yes, probably in a Kulak. I don't know
2 all of the details, sir; but I do know that it was during the
3 day. I was working at night, a night shift employee. And I
4 was in a row all by myself, and he somehow entered.

02:07 5 I don't know all the details because they're not
6 released yet, but I heard that there was a key missing from the
7 billeting office, which is by KBR. But --

8 THE COURT: And did -- is this the -- the predator,
9 did you have any acquaintance with him before that?

02:08 10 THE WITNESS: He showed up at my room three days
11 before, during the day, knocked on my door. I opened it. I
12 was sleeping. I woke up, opened it. And I've never seen him.
13 And he asked if he could, like, check something in my bathroom.

14 And I said, "Do you realize it says" -- because
02:08 15 on my door it said, "day sleeper."

16 And I walked outside and let him check. He was
17 in there for, like, 30 seconds -- three seconds. It wasn't
18 very long.

19 And I reported it to KBR that -- it just felt
02:08 20 weird, you know, that he came, with a sign, you know, came
21 during the day. It was very uncomfortable, and I reported it
22 to my boss that night when I went in to work.

23 BY MS. VORPAHL:

24 Q. You have no personal knowledge with regard to the
02:08 25 atmosphere towards women at Camp Hope in July of 2005, do you?

02:08

1 A. No, ma'am.

2 MS. VORPAHL: Those are all the questions I have, your
3 Honor; but I strongly urge that --

4 THE COURT: Okay. I know your position.

02:08

5 Mr. Kelly, you want to ask any questions?

6 MR. ESTEFAN: Mr. McKinney is up.

7 THE COURT: Do you want to ask a question?

8 MR. McKINNEY: Yes, I do.

9 THE COURT: Okay. You may go first.

02:09

10 **VOIR DIRE EXAMINATION**

11 BY MR. McKINNEY:

12 Q. Hi.

13 A. Hi, sir.

14 Q. I know this isn't easy for you.

02:09

15 A. It's not.

16 Q. Do you have any information that you can point to, even if
17 it's something that somebody else told you -- I'm just curious
18 as to what you might know or might not know -- any information
19 that would suggest that your attacker was in some form or

02:09

20 fashion aware of KBR HR policies, KBR mode of doing business,
21 anything of that nature?

22 A. I don't know, sir.

23 Q. All right. Prior to your being attacked, were you aware of
24 any sexual harassment directed to you that you think your
02:10 25 attacker was aware of, was a party to, participated in,

02:10 1 anything of that nature?

2 A. I don't believe so, no.

3 THE COURT: Okay. Anything you want to ask this young
4 woman?

02:10 5 MR. KELLY: Very briefly.

6 **VOIR DIRE EXAMINATION**

7 BY MR. KELLY:

8 Q. What happened to your attacker after your attack?

9 A. From what I understand, he got his DNA taken and that
02:10 10 they -- he got -- he asked to go home and somebody from KBR
11 signed his papers to get on an airplane and he went back to
12 India. So, now the FBI is looking for him. Hopefully he'll
13 get extradited, he'll get caught and there will be justice.

14 Q. Who did KBR blame for your rape?

02:10 15 A. Not them.

16 Q. Who did they blame? Was there an individual they said must
17 have done it?

18 A. My husband. They said that -- well, they investigated him
19 and they questioned him and he was -- they took his computer
02:11 20 and --

21 THE COURT: Was he working over there with you?

22 THE WITNESS: Yes, sir.

23 THE COURT: Or nearby?

24 THE WITNESS: Yes, sir. He worked --

02:11 25 THE COURT: Were you married then?

02:11 1 THE WITNESS: No, we weren't. We were just dating.

2 THE COURT: Why would they suggest that he was the
3 culprit?

4 THE WITNESS: They say the boyfriend is always the
02:11 5 first suspect.

6 MR. KELLY: That's all I have, your Honor.

7 THE COURT: I want to take a minute with my
8 colleagues. Nobody need rise.

9 MR. KELLY: May I approach the witness, your Honor?

02:11 10 THE COURT: You may.

11 We can take a short bathroom break.

12 *(Recess was taken from 2:11 p.m. to 2:20 p.m.)*

13 THE COURT: Okay. Is everybody back?

14 My questions are that this obviously is a very
02:20 15 sincere, entirely believable young woman. My heart goes out to
16 her. My questions are whether there was anything broader than
17 this single tragedy, which is beyond condemnation, I know. But
18 was there any pattern of sexual harassment that preceded this?
19 Was there any -- anything beyond a single catastrophic moment?

02:21 20 MR. KELLY: I think the answer is, your Honor, with
21 respect to the entire environment in Iraq, the answer is yes.
22 And she's just a continuing part of that.

23 THE COURT: But could she help us with that? Could
24 she tell a story of harassment or non-enforcement of rules or
02:21 25 anything?

0 2 : 2 1 1 MR. KELLY: Well, the non-enforcement of rules
2 actually pertains to her. She had a boyfriend that would stay
3 with her on occasion, your Honor, but -- so, she can certainly
4 do that, in fact, that that particular rule was not enforced.
0 2 : 2 1 5 But moreover, it's the way KBR again acted after the fact.

6 They removed the perpetrator, who was one of
7 their subcontractors, got him out of the country and then
8 started blaming the boyfriend. And it's -- once again, it's
9 the actions after the fact that I think are predominantly
0 2 : 2 1 10 relevant. That and the fact that it's just a continuation of
11 this abuse on women, the sexual abuse on women in Iraq.

12 And, again, as I said at the sidebar, your Honor,
13 I do -- I freely admit this goes more to punitive damages than
14 it does to the other elements in this case. And if the Court
0 2 : 2 1 15 is inclined to bifurcate, then she probably would not be
16 relevant now. If you're not inclined to bifurcate --

17 THE COURT: I don't think I'm going to bifurcate.

18 MR. KELLY: She'll be my last witness, and it's only
19 on that point.

0 2 : 2 2 20 THE COURT: Last witness at all?

21 MR. KELLY: We're going to rest after her.

22 THE COURT: What happened to the father?

23 MR. KELLY: The father is in Michigan, your Honor.
24 There's some issues with respect to him. I think the defense
0 2 : 2 2 25 is actually going to call him by deposition, and we'll respond

02:22 1 by deposition. But we have no intention of calling call him --

2 MS. VORPAHL: Well, we just learned that today. So,
3 we are going to designate some excerpts; but we aren't prepared
4 with those.

02:22 5 THE COURT: I'm not arguing with you.

6 MS. VORPAHL: Sure, sure. I just wanted to tell you
7 where we are on that.

8 Her boyfriend, who Mr. Kelly has acknowledged
9 spent the night with her on occasion, was not a KBR employee.
02:22 10 She was married to someone else at the time. I mean, I just
11 want you to have the full flavor. He was married to someone
12 else at the time. Please excuse me. And there has been no
13 allegation -- and you heard it from this witness' own mouth --
14 of any sexual harassment.

02:23 15 Now, I agree with you, this is a most unfortunate
16 circumstance; but the lawsuit -- the criminal investigation is
17 not even concluded. The lawsuit was filed a year ago. This is
18 not the kind of witness that has anything relevant to say with
19 regard to the allegations that we've been here three weeks on.

02:23 20 THE COURT: Well, it's a close question, I agree. I
21 mean, I think it might be relevant to punitive damages. And I
22 guess I would have to hear some more from her about -- and
23 that's the problem. When there's a pending lawsuit, I feel
24 like we almost need to try that lawsuit in addition to this
02:23 25 one. That's the problem.

02:23 1 MS. VORPAHL: There's no question about that. And,
2 your Honor, if I could, there -- I believe that under current
3 case law, specifically the *Kolstad* case, which I have here,
4 there won't be punitive damages as to Title VII, because there
02:23 5 was not supervisor harassment. This is coworker harassment in
6 the Jamie Jones case. And, so, there will not be a punitive
7 damage question put to the jury unless it is on the fraudulent
8 inducement claims, which things that happen four years later
9 could have nothing to do with fraudulent inducement.

02:24 10 So, I urge you -- and I'm happy to argue the --
11 whether or not there's a punitive damage claim.

12 THE COURT: No.

13 MR. KELLY: We disagree, your Honor. Actually, I
14 think the hostile work environment as well as the ratification
02:24 15 of Charles Bortz' actions subject KBR to punitive damages in
16 this case.

17 THE COURT: Now, on this witness, I mean, she's not
18 going to testify about other harassment?

19 MR. KELLY: No, your Honor. Her testimony is
02:24 20 admittedly very limited. And again, like I said, I think I
21 probably will have her on the stand myself ten minutes or less.

22 MS. VORPAHL: But she wasn't even -- her story doesn't
23 even involve a KBR employee but a subcontractor over whom, by
24 definition, KBR had no control. It is not an analogous
02:25 25 situation.

0 2 : 2 5 1 THE COURT: Well, no. KBR had some control over
2 housing, some control over where the keys were, some control
3 over whether they wanted to follow up on the complaint about a
4 subcontractor visiting her place of residence three days
5 earlier.

6 MS. VORPAHL: But that investigation is all still
7 ongoing.

8 THE COURT: Well, I mean, I can't fix that. I mean,
9 we don't have to exclude all evidence that comes from another
10 pending case. I don't think that's the law. I see your point.
11 I just think it's a very, very close call.

12 MS. VORPAHL: Well, respectfully, given the status of
13 Fifth Circuit jurisprudence on the whole issue of post-event
14 testimony and the fact that this is so attenuated in time, in
15 place, in the fact that there is not a KBR employee involved,
16 that it is a subcontractor, I just don't believe this testimony
17 has any place in this lawsuit.

18 MR. KELLY: Actually, the negligence -- the primary
19 negligence was not even of the subcontractor but of KBR itself,
20 your Honor.

21 THE COURT: No. The primary bad actor is
22 unquestionably the subcontractor.

23 MR. KELLY: Well, you're right. But the fact of the
24 matter is that there were three days' warning to KBR and to
25 Ms. Mayo's supervisors, by her testimony heard in this court.

02:26 1 That was an opportunity to rectify that problem.

2 Furthermore, as she's testified, what it looks
3 like the evidence is going to bear out is that there was a key
4 missing from the billeting office and that was probably the way
02:26 5 this man got in.

6 THE COURT: Well, that was a different camp and it
7 was -- I'm afraid I'm not going to be able to allow this. I'm
8 sorry. I'm very sorry.

9 Do you wish to rest?

02:26 10 MR. KELLY: Yes, sir.

11 THE COURT: Okay.

12 MR. KELLY: We would ask that -- before the defense
13 begins its case, your Honor, we would ask for that instruction
14 to the jury that we talked about earlier with respect to the
02:26 15 dismissal of the slander claim against Ms. Jones.

16 THE COURT: I'm sorry?

17 MR. McKINNEY: This is not an appropriate point.

18 MR. KELLY: I think it is appropriate.

19 THE COURT: What instruction are we talking about?

02:27 20 MR. KELLY: There was a slander claim against
21 Ms. Jones that was originally brought, your Honor. And I think
22 you had elected to hold off at the specific time that we had
23 asked for that instruction. The Court had said you were going
24 to instruct the jury on the dismissal of that claim.

02:27 25 We think that's appropriate at this point in time

02:27 1 with respect to that instruction, since the defense is now
2 going to take over their case. It's certainly not appropriate
3 for the jury to be considering a slander claim that no longer
4 sits before them.

02:27 5 MR. McKINNEY: I don't recall the Court declaring an
6 intent to instruct one way or the other on the nonsuit of the
7 slander claim. And certainly, at this point in time, what
8 would be the purpose? To underscore what? To call the jury's
9 attention to what?

02:27 10 *(Sotto voce discussion at bench with court staff)*

11 THE COURT: My law clerk confirms I did promise to
12 give an instruction. I don't think I promised as to when I
13 would give it.

14 MR. KELLY: That's correct, your Honor.

02:28 15 MR. ESTEFAN: You didn't say when, Judge. We had
16 moved for the Court to do so after Mr. Bortz' testimony, and
17 the Court deferred at that point.

18 THE COURT: I think giving a single instruction right
19 now would be confusing and give it more emphasis than it
02:28 20 deserves. I don't think I'll do that.

21 Okay. No other motions?

22 Don't wait till the jury comes back in and decide
23 you want to make a motion.

24 MS. VORPAHL: Has the plaintiff rested?

02:28 25 MR. ESTEFAN: Plaintiff has rested.

02:28

1

MR. KELLY: Yes.

2

MR. McKINNEY: Judge, we --

3

MS. VORPAHL: I have a motion for directed verdict.

4

02:28

5

And I don't mean to -- you're welcome to go first, but I don't want you to start your case.

6

MR. McKINNEY: No.

7

MS. VORPAHL: I have a motion for judgment as a matter of law.

9

THE COURT: I rather expected you would.

02:29

10

MS. VORPAHL: All right. May I hand it up? And we'll file it electronically now and provide copies.

12

MR. McKINNEY: Judge, what time are we starting tomorrow? I am going to alert a witness that I have under subpoena.

14

02:29

15

THE COURT: 8:30.

16

MS. VORPAHL: Do you want a moment to look at it, your Honor?

17

18

THE COURT: Yes, please.

19

02:30

20

Okay. I digested the -- at least the substance of the motion. Do you wish to add anything?

21

MS. VORPAHL: Probably -- there's probably not anything to add, your Honor.

22

23

THE COURT: Okay.

24

02:30

25

MS. VORPAHL: I would be happy to argue it, but I'm also happy to allow you to rely on the writing.

02:30

1

THE COURT: No.

2

Does plaintiff wish to argue the issue?

3

MR. KELLY: I don't read nearly that fast, your Honor.

4

So, I apologize.

02:30

5

THE COURT: All right. Rather than delay the jury

6

further, I think I would vote to carry on with the trial. And

7

I can always grant this at some other time if I decide to grant

8

it.

9

MR. McKINNEY: Judge, for the record, Charles Bortz

02:31

10

moves orally for an instructed verdict on all issues on the

11

basis of --

12

THE COURT: Well, I think with your client it's a lot

13

harder because there it's just a pure he said/she said. KBR

14

has some more arrows in its quiver. They have to go the

02:31

15

further step of showing some kind of supervisory negligence or

16

worse.

17

MR. McKINNEY: If I thought I had a compelling motion,

18

I would have been jumping up and down and saying it a little

19

bit louder. I'm just making -- just in case I happen to be

02:31

20

right, I'm making the motion --

21

THE COURT: Yeah. No, I understand what you're doing.

22

MR. McKINNEY: -- to preserve --

23

THE COURT: Both motions are noted. The issues set

24

forth are preserved for appeal.

02:31

25

Mr. Bortz' motion, I deny.

0 2 : 3 1 1 KBR's motion, I'll take under advisement.

2 MS. VORPAHL: Thank you, your Honor.

3 MR. McKINNEY: Judge, that leaves us with some
4 logistical issues.

0 2 : 3 2 5 THE COURT: Sir?

6 MR. McKINNEY: I was not anticipating that the case
7 would rest this early in the day. I have one witness that will
8 be good for about ten minutes, and my next witness is under
9 subpoena and will be here tomorrow morning at 8:30. And I'm
10 sorry about that, but I didn't anticipate --

11 THE COURT: I don't think I've ever gotten upset with
12 anybody on a logistical issue. You're saying -- are you going
13 to go first?

14 MR. McKINNEY: I believe so. Isn't that the order of
15 proof?

16 MS. VORPAHL: Yes.

17 THE COURT: That's fine.

18 Ms. Holcombe?

19 MS. HOLCOMBE: I was going to say, your Honor, one
20 thing we could take up later or now or whatever -- again, we
21 understand Ms. Morris is not available.

22 I think you said maybe by phone. We said we
23 would try to put it off for tomorrow. We can wait till
24 tomorrow. And I'm only saying --

0 2 : 3 2 25 THE COURT: Who are we talking about?

0 2 : 3 2 1 MS. HOLCOMBE: Stephanie Morris. Her child, the
2 sitting -- sorry. You can probably explain it better than me.

3 MR. KELLY: She has a childcare issue, to make a long
4 story short, your Honor, and could not be in court today. She
0 2 : 3 2 5 will be back in court tomorrow.

6 MS. HOLCOMBE: And the reason that's important is
7 because we do -- there are some more page and lines objections.
8 We would --

9 THE COURT: And who's Ms. Morris? Your witness?

0 2 : 3 3 10 MS. HOLCOMBE: Their lawyer, your Honor.

11 MR. KELLY: Our co-counsel, your Honor.

12 MR. ESTEFAN: Stephanie Morris, who's been here
13 since --

14 THE COURT: Oh, I'm sorry.

0 2 : 3 3 15 MS. HOLCOMBE: And, so, we have a few more page and
16 lines objections.

17 MS. CATES: A lot more.

18 MS. HOLCOMBE: A lot more, actually, because of our
19 direct -- or the defendants' direct examination of the page and
0 2 : 3 3 20 line designations they have objections to and we have
21 objections to their cross.

22 Mr. Kelly and I spoke this morning that
23 Ms. Morris is not available to handle the objections today; but
24 given how fast this is going, that will be something we need to
0 2 : 3 3 25 take up with the Court whenever either Ms. Morris can go by

0 2 : 3 3 1 phone or we can do it as soon as possible. We will have those
2 depositions to play as well potentially.

3 THE COURT: How many depositions are we talking about?

4 MS. CATES: Seven.

0 2 : 3 3 5 MS. HOLCOMBE: Possibly.

6 MR. HEDGES: They're very, very short excerpts that
7 your Honor is well aware of. Most of it has been played.

8 MS. CATES: Some are longer than others.

9 THE COURT: Okay. Well, we'll -- if we get done early
0 2 : 3 3 10 today, we can talk -- oh, Ms. Morris isn't available?

11 MR. KELLY: I would love to argue those, your Honor;
12 but floundering is probably not something you want to watch me
13 do.

14 THE COURT: Okay. So, do we have any witnesses this
0 2 : 3 4 15 afternoon?

16 MR. McKINNEY: I'm going to call Gabe Andino for about
17 ten minutes, and that will be it.

18 THE COURT: On deposition or live?

19 MR. McKINNEY: Live. He's here in the courtroom.

0 2 : 3 4 20 THE COURT: Oh, Mr. Andino. I beg your pardon, sir.
21 I'm sorry. No. I was thinking he's already testified, which
22 he has but --

23 Okay. So, we need the jury back in here for what
24 exactly? Mr. Andino and that's all?

0 2 : 3 4 25 MR. McKINNEY: And I'm going to offer into evidence

0 2 : 3 4 1 this flak jacket -- I've been laying the foundation for it --
2 so the jury can actually see and experience what's involved in
3 one of these.

4 THE COURT: I thought you were kidding. I thought you
0 2 : 3 4 5 were offering it to me.

6 MR. KELLY: Actually, though, Judge, I think there has
7 to be a showing that that's even similar to the one that was
8 issued to Ms. Jones.

9 MR. McKINNEY: Well, I'm going to lay the foundation.
0 2 : 3 4 10 If I don't --

11 THE COURT: Lay the foundation, yes.

12 MR. ESTEFAN: And that's the only reason you're
13 putting on Mr. Andino, for that?

14 MR. McKINNEY: That's it.

0 2 : 3 5 15 *(Discussion off the record)*

16 THE COURT: And there's not a single one of your depos
17 we can put on now? Because apparently, Ms. Loewe tells me, the
18 jury was ready to stay till 5:30 this afternoon.

19 MS. CATES: Not without Ms. Morris here, unless they
0 2 : 3 5 20 want to waive their objections to our cuts. Or we can argue
21 them now. There's -- some of them -- there's not that many.

22 THE COURT: Mr. Kelly indicates he's not ready to
23 argue. I don't want to disadvantage his side because of
24 childcare problems.

0 2 : 3 5 25 MR. KELLY: Thank you, your Honor.

02:35 1 THE COURT: We've all been in that situation before.
2 Even those of us who are not parents, I think we've seen that.

3 Okay. Well, I guess we'll bring them back in and
4 put on Mr. Andino.

02:36 5 Are we going to cut them loose right in the
6 middle of the afternoon?

7 MR. MCKINNEY: I think you can tell the jury, though,
8 that the case will end this week.

9 It will end this week?

02:36 10 MS. VORPAHL: I certainly think so.

11 MR. MCKINNEY: Yes. So, we're going to be finished, I
12 think, with all the evidence this week. It could be as soon as
13 tomorrow.

14 MR. KELLY: Just as far as the Court preference, your
02:36 15 Honor, would you prefer that we stand up and let the jury know
16 that we've rested?

17 THE COURT: Yes.

18 MR. KELLY: Okay.

19 THE COURT: Okay. Anything else before we bring the
02:36 20 jury back in?

21 *(Jury present)*

22 THE COURT: Members of the jury, please be seated.

23 MR. KELLY: Plaintiff rests, your Honor.

24 THE COURT: Okay. Ladies and gentlemen, that's an
02:37 25 important marker in the trial. The plaintiff has now concluded

02:37 1 its evidence. We'll now hear from -- whatever the defendants
2 want to offer.

3 We believe, with a high degree of confidence,
4 we'll be finished with the trial this week. We may have an
02:37 5 awkward break here because not all defendants are ready to go
6 for -- this afternoon. But we won't have much more evidence
7 from them, I'm told. So, Mr. Bortz is going to present his
8 evidence next.

9 And we have at least one witness ready to go. Is
02:37 10 that right?

11 MR. McKINNEY: One witness today, your Honor, another
12 witness at 8:30 in the morning; and then I'll be finished.

13 THE COURT: You'll be finished. Okay. So, we're
14 making progress.

02:38 15 Okay. Call your witness.

16 MR. McKINNEY: Charles Bortz re-calls Gabe Andino to
17 the witness stand.

18 THE COURT: Okay. Mr. Andino, I'm sure you know
19 you're still under oath.

02:38 20 THE WITNESS: Yes, your Honor.

21 **GABE ANDINO, DULY SWORN, TESTIFIED:**

22 **DIRECT EXAMINATION**

23 BY MR. McKINNEY:

24 Q. I want to visit with you briefly about the types of
02:38 25 personal protective equipment that was issued to all KBR

02:38 1 employees in Camp Hope and elsewhere in Iraq.

2 Can you identify the types of personal protective
3 equipment that each and every employee, including Jamie Leigh
4 Jones, would have?

02:38 5 A. Yes, sir.

6 Q. And what would that be?

7 A. For the most part, we used a civilian style vest, PPE vest.

8 In some cases there were a few military style. And the
9 difference was, of course, the manufacturer, the type of

02:39 10 clothing that it would have, whether it was camouflage or not.

11 And probably the most important thing would have been the
12 different weight that would have been associated with that type
13 of protective vest.

14 Q. All right. In addition to a vest, were employees issued
02:39 15 helmets?

16 A. Yes, sir, they were.

17 Q. The head gear?

18 A. Yes.

19 Q. Was the head gear -- was the helmet and the vest, or the
02:39 20 jacket, were they designed to be shrapnel proof?

21 A. They were.

22 Q. When traveling, such as in a helicopter, what rules were
23 there regarding wearing one's personal protective equipment?

24 A. It was absolutely essential that you travel with PPE in any
02:40 25 type of aircraft.

02:40 1 Q. All right. When you say "traveling with PPE," was it
2 appropriate to have your flak jacket and your helmet resting on
3 your lap, or were you -- was each and every employee actually
4 required to wear their jacket and their helmet?

02:40 5 A. You could not board an aircraft unless you were properly
6 donning your flak vest and your helmet. You had to be wearing
7 them.

8 MR. McKINNEY: Your Honor, may I approach the witness?

9 THE COURT: You may.

02:40 10 BY MR. McKINNEY:

11 Q. You've seen this before?

12 A. I have.

13 Q. If you don't mind, so that your voice carries on the
14 microphone --

02:40 15 A. Yes, I have seen that before.

16 Q. Do you recognize that?

17 A. I do.

18 Q. What is it?

19 A. It's a flak vest.

02:40 20 Q. In terms of comparing that flak vest to the type of flak
21 vest available to KBR employees such as Jamie Leigh Jones in
22 the summer of 2005, is that flak jacket substantially similar
23 in size, weight, configuration, et cetera, such that it is a
24 reasonable facsimile of the type of flak jacket that would have
02:41 25 been issued to Ms. Jones?

02:41 1 A. I think, for the most part, it is. I mean, the only thing
2 that I would probably highlight that is probably a little
3 different from what we wore then is this one is a little bit
4 lighter than what we wore then.

02:41 5 Q. The flak jacket that is by your side, other than being
6 somewhat lighter than the type worn back in the summer of '05
7 by KBR employees, is it substantially and functionally the
8 same?

9 A. It is.

02:42 10 MR. MCKINNEY: Your Honor, I'm going to mark that as
11 whatever our next number exhibit is. Someone is going to tell
12 me that.

13 MS. CULLEN: It's 257.

02:42 14 MR. MCKINNEY: Mark that Bortz 257, and I move for the
15 admission of Bortz --

16 THE COURT: Well, I'm going to let plaintiff have a
17 chance to examine this witness; and we'll make a decision after
18 that has happened.

19 MR. MCKINNEY: All right. I pass the witness.

02:42 20 THE COURT: KBR have any questions?

21 MS. VORPAHL: No, your Honor, we don't.

22 THE COURT: Okay. Yes, sir, Mr. Estefan.

23 MR. ESTEFAN: I do, your Honor.

24 **CROSS-EXAMINATION**

02:42 25 BY MR. ESTEFAN:

0 2 : 4 2 1 Q. Mr. Andino, I understand that you're here to talk about
2 that flak jacket, just that this afternoon, right?

3 A. That's my understanding.

4 Q. Do you know whether Jamie wore that flak jacket or one like
0 2 : 4 2 5 it when she got on the helicopter?

6 A. I do not know if she wore that flak jacket, no.

7 Q. Or even one like it?

8 A. I don't.

9 Q. In fact, you weren't there when she boarded the helicopter?

0 2 : 4 2 10 A. That is correct.

11 Q. Do you recall -- or have any knowledge, I should say, of
12 what kind of helicopter Ms. Jones got on that day?

13 A. Only by what we've heard here.

14 Q. And we've heard she got on a Little Bird. You remember
0 2 : 4 3 15 that testimony?

16 A. That's correct.

17 Q. Which is a private aircraft, not a military aircraft?

18 A. It's a civilian aircraft.

19 Q. That's what I meant. Thank you for correcting me,
0 2 : 4 3 20 Mr. Andino.

21 It's a civilian aircraft, which means that, then,
22 military flak jackets and things like that are not required to
23 be worn on a civilian aircraft. Is that right?

24 A. I have seen that -- civilian aircraft many times, and all
0 2 : 4 3 25 the operators in that aircraft would have their flak jackets

02:43 1 on.

2 Q. They may by choice; but it's not a requirement, fair?

3 A. I can't answer that, sir.

4 Q. All right. Now, Ms. Jones -- in fact, her flak jacket that
02:43 5 she had issued to her when she was in Camp Hope, that remained
6 in her room, right?

7 A. I don't know that, sir.

8 Q. And you don't know whether she wore any flak jacket at all,
9 one like that or one completely different than that, when she
02:44 10 boarded that helicopter?

11 A. I've only heard what has been stated by virtue of
12 depositions during this trial --

13 Q. Right.

14 A. -- of what others have stated.

02:44 15 Q. So, you have no idea if she even wore a flak jacket when
16 she got on the helicopter?

17 A. Personally, I did not see her wear a flak jacket, no, sir.

18 MR. ESTEFAN: Thank you.

19 Pass the witness, your Honor.

02:44 20 MR. McKINNEY: Just one or two points.

21 THE COURT: Yes, sir.

22 **REDIRECT EXAMINATION**

23 BY MR. McKINNEY:

24 Q. You heard William Goodgine's testimony?

02:44 25 A. Yes, I did.

0 2 : 4 4 1 Q. She was wearing a flak jacket?

2 A. Yes, that's what he stated.

3 Q. Mr. Goodgine was a KBR employee?

4 A. Yes, sir.

0 2 : 4 4 5 Q. He would have drawn a flak jacket from the KBR inventory of
6 flak jackets?

7 MR. ESTEFAN: Your Honor, I think that calls for the
8 witness to speculate on what Mr. Goodgine would have done.

9 THE COURT: Your response?

0 2 : 4 4 10 THE WITNESS: Can you repeat the question?

11 MR. McKINNEY: I'll try to fix the question.

12 THE COURT: Okay.

13 BY MR. McKINNEY:

0 2 : 4 4 14 Q. Where else would Mr. Goodgine have gotten a flak jacket
15 other than the KBR inventory of flak jackets?

16 A. That's the only source he would have had.

17 Q. If Mr. Goodgine has testified, which I believe he has, that
18 he put a flak jacket on Jamie Leigh Jones, would there be any
19 other source of flak jackets for him to look to, other than a
0 2 : 4 5 20 standard KBR inventory?

21 A. No, sir.

22 Q. And the flak jacket there to your immediate right, is that
23 flak jacket substantially similar in size, weight, and function
24 to the KBR inventory of flak jackets?

0 2 : 4 5 25 A. In size and function, yes. Weight, this is probably a

02:45 1 little bit lighter than what I've at least experienced.

2 MR. McKINNEY: I think that's an adequate foundation.
3 I move for --

4 THE COURT: I'm not going to be able to allow it.
02:45 5 There's too many holes in the story. It's nothing to do with
6 Mr. Andino. It's a marginal issue anyway, what kind of flak
7 jacket she was wearing. So, I'm not going to allow it.

8 You may step down, Mr. Andino.

9 That's it for today. Is that right?

02:45 10 MR. McKINNEY: That's all I have, Judge, for today.

11 THE COURT: Well, I'm terribly sorry, ladies and
12 gentlemen. But I will say this. When you're not here, we do
13 keep working and we do try to make the trial shorter. And
14 we'll try to put our time to good use this afternoon. I'm very
02:46 15 sorry. We'll see you at 8:30 in the morning.

16 *(Jury not present)*

17 THE COURT: Please be seated.

18 What makes sense this afternoon? The plaintiff
19 has indicated it's not ready to talk about line and page. Does
02:46 20 it make sense to talk about jury instructions?

21 MR. McKINNEY: Sure.

22 MR. KELLY: Your Honor, I have something very brief.

23 THE COURT: Sure.

24 MR. KELLY: There's an indication that they intend to
02:47 25 call Dr. Paskowitz tomorrow. He's not on either defendants'

02:47 1 witness list, and they did not cross designate. So, we would
2 move that he not be allowed to --

3 THE COURT: Why don't you spell that for the court
4 reporter, please.

02:47 5 MR. KELLY: P-A-S-K-O-W-I-T-Z.

6 I have both witness lists if the Court would like
7 to see them.

8 MR. McKINNEY: Well, my response to that is, guys, I
9 have asked and had reported to me at least a half a dozen times
02:47 10 in this trial, "Are you bringing Dr. Paskowitz because I want
11 to cross-examine him?"

12 And up until today I was told that Dr. Paskowitz
13 would testify either today or tomorrow.

14 THE COURT: What is his field?

02:48 15 MR. McKINNEY: He is Ms. Jones' treating psychiatrist.
16 Ms. Jones' treating psychiatrist. And I have some questions
17 for the man.

18 THE COURT: He's here in Houston?

19 MR. McKINNEY: He is. I've subpoenaed him. He'll be
02:48 20 here at 8:30 tomorrow morning. He's been on their witness
21 list.

22 THE COURT: See, this is one of those issues that you
23 apparently discussed between yourselves. I have no idea what
24 the equities of that are.

02:48 25 MR. KELLY: Well, your Honor, I know that witnesses

0 2 : 4 8 1 have been excluded from the plaintiffs' list simply because
2 they are not on the list. I have both defendants' lists.

3 THE COURT: No. The question is whether your oral
4 representations override that.

0 2 : 4 8 5 MR. KELLY: Well, I know I didn't personally make that
6 oral representation that he was coming. I can't think --

7 MR. ESTEFAN: We've cut down a number of witnesses,
8 Judge, that we had intended to call because of the length this
9 trial has gone on. We had promised this jury three weeks, and
0 2 : 4 8 10 we're already into our fourth week now. So, we didn't -- there
11 were three of these witnesses that were going to come this
12 afternoon. As you saw, we only called two.

13 We're not planning on calling Mr. Jones. We're
14 doing everything we can now because I think we're being taxed
0 2 : 4 9 15 with the length of the trial.

16 THE COURT: Well, by whom? Not by me.

17 MR. ESTEFAN: By the jury, your Honor.

18 THE COURT: Why do you think that?

19 MR. ESTEFAN: Because we told them it was going to be
0 2 : 4 9 20 three weeks. We haven't even rested yet, until today.

21 MS. HOLCOMBE: Your Honor?

22 THE COURT: Yes. Go ahead.

23 MS. HOLCOMBE: I would just add, each day I've spoken
24 with Mr. Estefan, or Ron, about the witnesses that are coming.

0 2 : 4 9 25 And I do know that last Thursday, when we were kind of wrapping

0 2 : 4 9 1 up for the week and preparing for what was going to come
2 today -- and one of the reasons the defense doesn't have anyone
3 today is because it was our understanding, and it has been
4 throughout, that this -- today was going to consist of
0 2 : 4 9 5 Dr. Scarano, the me-too witnesses. And then Mr. Jones and
6 Mr. Paskowitz were told to me as of last Thursday that he would
7 come testify today and, if they didn't have time today, they
8 would flow over until tomorrow.

9 So, even as the last time we spoke -- and we were
0 2 : 4 9 10 in a habit every day of talking about -- which was very
11 gracious of them -- who was coming. We did rely on that until
12 today when they have now said that Mr. Paskowitz is no longer
13 coming. So, I will just say that I have been a part of those
14 conversations each afternoon. And Mr. Paskowitz, until today,
0 2 : 5 0 15 was even orally represented that he would have been coming as
16 their witness.

17 MR. KELLY: Your Honor, I can't speak to the truth of
18 that, because I wasn't in those conversations. But assume it's
19 true for the purposes of this argument. We've also talked
0 2 : 5 0 20 about Patti Chapman all through this trial; but the issue has
21 been: Not on our list, not coming to trial.

22 I would respond that, even if they thought we
23 were bringing Dr. Paskowitz all throughout this trial, the time
24 to have said they were going to bring him was the time when
0 2 : 5 0 25 they designated; and they didn't do it. Not on their list, not

02:50 1 coming to trial. Your Honor, clearly --

2 THE COURT: I understand what you're saying.

3 MR. KELLY: -- clearly they shouldn't be allowed to do
4 something we can't do.

02:50 5 THE COURT: The difference between that -- this
6 situation and Ms. Chapman is I don't think anybody ever assured
7 you that Patti Chapman would be called.

8 MR. KELLY: No, your Honor. But the difference --
9 it's really not that different. As soon as I knew of Patti
02:51 10 Chapman, within a day of knowing, literally, within 24 hours of
11 knowing about Patti Chapman's import to this case, I informed
12 the Court and opposing counsel of my intention to bring her.
13 And the reason that I was not allowed to do so was because she
14 hadn't been on my exchanged witness list and --

02:51 15 THE COURT: No. I understand that.

16 MR. KELLY: So, everything that's happened has been
17 subsequent to those lists --

18 THE COURT: No. I understand that. But I just -- I
19 don't -- I would like to think that lawyers can proceed between
02:51 20 themselves on a handshake or a conversation. And if that has
21 been traduced in this situation, I don't feel good about it.

22 MR. McKINNEY: And let me be clear. Let me be clear.

23 I'll be happy to visit with Ron privately before
24 I say anything on the record.

02:51 25 Do you want to talk? I mean, I thought --

0 2 : 5 1 1 THE COURT: You thought --

2 MR. MCKINNEY: From the beginning of the trial, I have
3 made it a point to inquire whether Dr. Paskowitz would be
4 coming as a witness; and I have been told up until today that
0 2 : 5 2 5 he would. And when I was told this morning that he would not
6 be called in the plaintiffs' case, I advised opposing counsel
7 that I would put a subpoena out for Dr. Paskowitz, which I have
8 done; and he has been served.

9 He is standing by to be here tomorrow. He is
0 2 : 5 2 10 Ms. Jones' principal treating psychiatrist. His testimony is
11 not a surprise. We are checking our paperwork to see if we
12 have a catchall cross designation. Normally we do. It would
13 have been an oversight if we didn't.

14 But whether we did or we didn't, who, in a case
0 2 : 5 2 15 like this, with the amount of paper that's been filed, has in
16 their mind whether or not someone has been cross designated?

17 With respect, this is a bit of a gotcha. It's
18 not like this witness wasn't known, wasn't anticipated. He was
19 introduced to the jury by plaintiffs' counsel during voir dire.
0 2 : 5 3 20 You know, I'm sorry. I think I have every right to call this
21 person because he's not a surprise, subject to their control or
22 their access. That's just -- I can't see why I wouldn't be
23 allowed to call him.

24 MR. ESTEFAN: Your Honor, we were also -- just to give
0 2 : 5 3 25 you an idea, there's a lot of moving parts here but --

02:53

1 THE COURT: Yeah, there are.

2 MR. ESTEFAN: -- we were informed that Mr. Iler and
3 Ms. Royal were coming, and Mr. McKinney tells us Monday morning
4 last they're not coming.

02:53

5 THE COURT: I'm definitely allowing you to subpoena
6 those guys.

7 MR. ESTEFAN: They're now out of subpoena range.
8 Mr. Iler is out of the country. And so, you know, things are
9 changing all the time in a trial, Judge.

02:53

10 And, so, you know, Mr. McKinney did the same to
11 us that he's now -- that's how he recognizes it, I suppose,
12 because he's now saying we're doing to him what he did to us.

13 MR. MCKINNEY: Well, excuse me. Excuse me. Mr. Iler
14 was available for subpoena Monday, Tuesday, and Wednesday of
15 last week. Nobody made a move in that direction. Nobody was
16 coming to me, saying, "You going to bring him? Because we're
17 counting on it."

02:54

18 I was -- simply told you that if I was going to
19 call him I was going to call him out of order because he had
20 travel plans. And we got jammed up last week on other
21 witnesses; and I didn't want to take up any time with him
22 because, quite frankly, I thought it was a sideshow.

02:54

23 Her principal treating psychiatrist, however, is
24 not a sideshow.

02:54

25 MR. KELLY: It just occurs to me how, Mr. McKinney,

0 2 : 5 4 1 you continue to frame what's a sideshow and what is the main
2 points of this case in the manner that's most beneficial to
3 you. We tend to disagree with you. So, just because you call
4 it a "sideshow" doesn't make it so, sir.

0 2 : 5 4 5 MR. McKINNEY: Well, and I'm not saying that I speak
6 with the force of law, although sometimes I think I do. I'm
7 simply saying that it was my judgment that last week, with
8 everything else we had going on, Mr. Iler and Ms. Royal didn't
9 bring enough to the table to justify supplanting other
0 2 : 5 5 10 witnesses, because the case had been going on a long time. I
11 gave everybody notice as soon as I made that decision --

12 MR. KELLY: The morning they were to be called.

13 MR. McKINNEY: No, sir.

14 MR. KELLY: My notes --

0 2 : 5 5 15 MR. McKINNEY: The morning before.

16 MR. KELLY: My notes of the cross-examination are
17 still in my folder because I planned to cross him that day,
18 sir.

19 MS. HOLCOMBE: It was the Monday, and he wasn't
0 2 : 5 5 20 expected to be called until Tuesday.

21 MR. McKINNEY: Exactly.

22 I told you Monday morning that he wasn't coming.
23 They were due to be called on Tuesday.

24 And all I'm saying is -- you know, and you didn't
0 2 : 5 5 25 try to subpoena him.

02:55 1 Ms. Pulver -- Ms. Royal is in town, bring her in.

2 THE COURT: Remind me who Ms. Royal is, sir.

3 MR. MCKINNEY: Ms. Royal is -- if you'll recall the
4 e-mail exchange between Ms. Jones and her mother that --

02:55 5 THE COURT: Oh, yes.

6 MR. MCKINNEY: -- that's -- Jennifer Royal was the
7 other employee who was supposedly being mistreated. She would
8 say that she's not.

9 In any event --

02:56 10 *(Sotto voce discussion between defense counsel)*

11 MR. ESTEFAN: Judge, part of this, I will freely
12 admit, is frustration over three weeks of wrangling with
13 opposing counsel and looking for whatever strategic or other
14 advantage we can get. I'm sure they're doing the same thing on
02:56 15 their side.

16 With or without a cross designation, if this
17 Court says that Dr. Paskowitz can come testify, then the
18 plaintiffs are not going to --

19 THE COURT: Tell me what he's going -- is it -- sounds
02:56 20 like it may be very cumulative. Do we really need anything
21 from him? I would have thought your side got everything it
22 wanted from a psychiatrist in Dr. Scarano. Why do we need
23 anything further?

24 MR. MCKINNEY: Well, I think that I have some relevant
02:57 25 questions to ask her principal treating psychiatrist, based on

02:57 1 his records and based on the history that she gave that --

2 THE COURT: So, it goes more to plaintiff's
3 credibility?

4 MR. McKINNEY: And whether or not she has
02:57 5 post-traumatic stress disorder and a variety of other issues.

6 MR. ESTEFAN: And one other thing I might add, your
7 Honor. I think Dr. Paskowitz' records are in evidence. So --
8 and Mr. McKinney, of course, as all of us, would be free to
9 argue any reasonable inferences therefrom. So, it's not as
02:57 10 though he wouldn't have the benefit of anything Dr. Paskowitz
11 has to say.

12 MR. McKINNEY: I do find myself a bit taken aback
13 having to respond to this. You know, for some number of hours,
14 my esteemed opponents have known that I intended to call
02:58 15 Dr. Paskowitz. The first I heard that they were going to raise
16 the objection that he was not on my witness list was when they
17 stood up and made the announcement after the jury left.

18 THE COURT: I'm going to allow it. I'm going to allow
19 him to testify.

02:58 20 Tell me where the basic thematic disagreements
21 are on the jury charge. Don't have to get into the details
22 yet. Tell me where you're disagreeing.

23 MS. VORPAHL: I'd have to say we don't have any idea,
24 because we have not exchanged charges.

02:58 25 THE COURT: Okay. Well, then, I'm not going to get in

02:58 1 the middle of that. You-all spend this time talking about it.

2 MS. VORPAHL: That's a great idea, your Honor. I
3 think that's what we should do.

4 MR. MCKINNEY: I will say -- for what it's worth, let
02:58 5 me throw this out because the fundamental thematic issue I see
6 is that the first question ought to be whether my client raped
7 Ms. Jones. I think that's the first question the jury ought to
8 have to answer. And I think the instructions ought to come out
9 of the Texas Penal Code. So, if anybody has an issue with
02:59 10 that --

11 THE COURT: Well, I mean, there are potentially a lot
12 of issues when criminal charges are used in a civil proceeding.
13 I've done other hybrid cases. It's a little tricky.

14 If we have an instruction that clearly applies
02:59 15 and the parties can't agree, the default option is always going
16 to be the pattern jury instruction. If we can't agree, that's
17 the default option. Often the parties can agree and have a
18 custom-made, tailored instruction that's more suitable; but
19 lacking that, we'll use the patterns.

02:59 20 Have you -- there's also an issue -- the default
21 option in the pattern jury instructions on the civil side is
22 that you guys argue and then I charge. Every case I've ever
23 had, except one, the lawyers preferred that I instruct and then
24 they argue.

03:00 25 MR. ESTEFAN: I prefer that, Judge.

03:00

1 MS. VORPAHL: So do we.

2 MR. McKINNEY: We're all fine with that.

3 THE COURT: Okay. How much time are you-all going to
4 need for closing arguments?

03:00

5 MR. HEDGES: I thought your Honor already had given
6 us, like, an hour a side.

7 THE COURT: Yeah, but I just wonder --

8 MR. ESTEFAN: I thought it was a little longer than
9 that.

03:00

10 MR. KELLY: I think it was a little longer than that,
11 Judge.12 MR. ESTEFAN: An hour and a half a side, I thought.
13 We had that in voir dire and opening.14 THE COURT: That's an awful -- three hours of closing
15 arguments?

03:00

16 MS. VORPAHL: That's awful.

17 THE COURT: And we got -- I mean, do you-all divide up
18 the time?19 MS. VORPAHL: We would certainly divide up whatever
20 time there is, but I think three hours is still too much.
21 That's just my own view.

03:00

22 MR. McKINNEY: It depends on how much of it I get.

23 MS. VORPAHL: Well, we'll probably give you a few
24 minutes.

03:00

25 I'm kidding.

03:00

1

I'm assuming we would split the time evenly.

2

MR. MCKINNEY: I'm going to need 30, 35 to 40 minutes.

3

THE COURT: No, you don't.

4

03:01

5

MR. MCKINNEY: I think I do, Judge. They're going to be up for --

6

THE COURT: I thought you told me this was a simple

7

case, we ask the first question, did your client rape

8

plaintiffs' client; and then, if the answer is what you think

9

it's going to be, that's -- your whole case is over. You don't

03:01

10

need 30 minutes to explain that.

11

MR. MCKINNEY: Well, we have three weeks of evidence, Judge, and a fair amount to discuss in the evidence.

13

THE COURT: I'm going to give an hour per side.

14

You-all can divide it up however you wish. Okay.

03:01

15

MS. VORPAHL: Your Honor, while we're talking about charge issues, I do believe that as to the fraudulent inducement claims -- and I've included this in the motion for directed verdict -- that there's going to be a decision that the Court is going to have to make as to duty.

03:01

20

THE COURT: Okay. All right. Thank you-all very much.

21

22

(Proceedings recessed for evening)

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COURT REPORTER'S CERTIFICATION

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled cause.

Date: July 5, 2011

/s/ Cheryll K. Barron

Cheryll K. Barron, CSR, CMR, FCRR
Official Court Reporter

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